The Solicitors' Journal

VOL. LXXXI. **Saturday, August 7, 1937.** No. 32

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

Custody of the Great Seal.

WHILE the whole profession has regretfully been aware that of late the health of the Lord Chancellor has not been as satisfactory as could be wished, they will cherish the hope that its complete restoration will be effected by the rest and change during the voyage to South America upon which LORD HAILSHAM has embarked, and they will look forward to his return after the Long Vacation, able once again for the resumption of the many onerous duties that fall to him. As a consequence of his absence from the realm provision had necessarily to be made for the custody of the Great Seal, and this has been effected by the appointment of a Commission for its care and custody, the Commission consisting of LORD HALIFAX (the Lord President of the Council), LORD ONSLOW (the Chairman of Committees of the House of Lords), the Lord Chief Justice, the Master of the Rolls, and the President of the Probate, Divorce and Admiralty Division. This is a reminder of the inflexible rule that the Great Seal, the symbol of august authority, must not be taken out of the kingdom. Naturally, in view of its vital importance, it is always carefully conserved, though not perhaps quite in the way so picturesquely described by Mr. Solomon Pell in the veracious history of Mr. Pickwick; but despite the jealousy with which it has usually been guarded, it has, at different times, experienced vicissitudes. Once it was intentionally dropped into the Thames, but fortunately fished up again; once it was stolen from the house of the Lord Chancellor, thus necessitating the casting of a fresh seal; and once it had a narrow escape when LORD ELDON'S house went on fire, and the Lord Chancellor, to preserve it, hurriedly buried it in his garden, and, forgetting the precise spot where it was interred, the whole household was set to work digging assiduously till at last it was found, to the intense relief of LORD ELDON. With each new monarch —though not always at once—a fresh Great Seal is made, the Lord Chancellor for the time being retaining the old one as his perquisite. On one occasion, it may be recalled, owing to a change of ministry, the right to retain the old seal was claimed by the old and the new occupant of the Woolsack. The dispute, which was quite amicable, was referred to the arbitrament of the Sovereign, who, with the wisdom of Solomon, directed that it should be divided and half given to each claimant.

Financial Resolutions.

THE report of the Select Committee appointed last April "to consider the working of the Standing Orders relating to public money and, subject to the unimpaired maintenance of the principles embodied in Standing Orders Nos. 63 to 66 (both inclusive) to report as to whether any or what changes are desirable in Standing Orders No. 68 and No. 69 or in procedure relating to Money Resolutions" has recently been issued by H.M. Stationery Office (price 3d. net). The setting up of the committee was, it may be remembered, the direct outcome of the debate in the House of Commons on the Special Areas Amendment Bill of the present year, though similar complaints of the amount of detail embodied in financial resolutions, with a consequent narrowing of the scope of the debate and the impossibility of moving other than restrictive amendments, have been evident in regard to other Bills, notably the Unemployment Insurance Bill of 1933, the Depressed Areas (Development and Improvement) Bill of 1934, and the Tithe Bill of 1936. Moreover, the difficulties with which the House is now faced of reconciling the separate functions of the Crown and the Commons in providing for expenditure have, as the Committee intimates, been enhanced by the increased output of social legislation in recent years, for the natural attitude of the House can no longer be regarded as one tending to cut down public expenditure in view of the considerable body of opinion in the House favouring the increase of public expenditure on social services. The respective functions of Crown and Commons in this connection are, of course, embodied in Standing Orders Nos. 63 and 64, both passed in the reign of QUEEN ANNE, the former vesting in the Crown "the sole responsibility of incurring national expenditure," and forbidding an increase by the Commons of a sum demanded on behalf of the Crown for the service of the State, the latter giving effect to the principle that a preliminary stage shall be taken on any proposal for expenditure before the House commits itself to that expenditure by laying down that

such proposals shall be initiated in a Committee of the whole House. The Select Committee, while not questioning the principle contained in Standing Order No. 63, that the House may not increase a charge, is of opinion that the House should not be prevented by the manner in which a resolution is drawn from varying the purposes of expenditure within the framework of the Crown's proposals, and thus making its criticism constructive. "This freedom," it is said, "the House has enjoyed in the past, and any tendency to curtail it is to be deprecated," and while, in the political circumstances of the present time, the Committee does not favour the founding of a Money Bill on a resolution so widely drawn as that of the Old Age Pensions Bill of 1908, it is sensible of the danger of allowing an undue encroachment by the Government upon the sphere of the House "by reducing the functions of the latter in respect of financial legislation to purely restrictive criticism."

Recommendations of the Committee.

In order that the House may be able to exercise a proper measure of control over the financial proposals of the Crown while safeguarding to the latter its undoubted and sole power of initiating expenditure, the Select Committee advocates greater freedom during the committee stage. To secure this the terms of the Money Resolution under Standing Order No. 69 should be wider than the terms of the Bill, so that amendments can be moved in committee up to the limits prescribed in the Resolution, while the terms of the Resolution should not be so wide as to give the House the almost unlimited power to increase expenditure which it enjoyed in the case of the Old Age Pensions Bill. "Your committee," it is stated, "have arrived at the general conclusion that some intermediate standard of drafting between the undue narrowness of some modern Resolutions and the extreme freedom existing before the War is desirable." The committee, therefore, advocates the formal expression of an opinion by the House to this effect and prefers of the two methods available—by standing order or declaratory resolution—the latter, in that the proposal does not introduce any innovation but maintains what has long been the established parliamentary practice. If a resolution of the character suggested were in force, it would be open to any member who objected to the amount of detail contained in a Financial Resolution, to call attention to it and ask for the Speaker's ruling on the question whether it complied with the terms of the declaratory resolution, and the Speaker's ruling on the point would be final. It is pointed out in regard to an objection that the resulting restriction of the Government's unfettered discretion in defining the purposes of public expenditure would infringe the principle embodied in Standing Order No. 63, that the House already exercises some control over the form of the Crown's financial demands by requiring the sanction of the Public Accounts Committee and the Estimates Committee for a change in the form in which estimates are prepared, and by prohibiting the imposition of taxes on several different commodities by means of a single resolution. The Committee also recommends that Financial Resolutions should be taken after the second reading of Bills of which the primary purpose is the expenditure of public money, and that the practice in such Bills should thus be assimilated to that in respect of Bills whose financial provisions are subsidiary to their main purpose. This is recommended as not only desirable for its own sake, but as complementary to the purpose of the declaratory resolution recommended above. It is therefore suggested that a new Standing Order be drafted to the effect that "A Bill (other than a Bill which originates in Committee of Ways and Means) the main object of which is the creation of a public charge, may be presented by a Minister of the Crown and proceeded with in the same manner as a Bill which involves a charge subsidiary to its main purpose."

London Police Courts.

The attention of readers may be drawn to the fact that the Departmental Committee on Courts of Summary Jurisdiction in the Metropolitan Area has recently issued its report (H.M. Stationery Office, price 9d. net). In view of the fact that an article on the subject will appear in our pages shortly little need be said concerning the recommendations which the committee has seen fit to make, but it may be briefly recorded that the committee pays tribute to the manner in which Metropolitan magistrates have secured the confidence of the people, particularly that of the poorer section of the community, and that it advocates a reduction in the number of metropolitan police courts from fourteen to ten, the relief of congestion by the provision of several court rooms in each building, the securing of a reasonable measure of uniformity in dealing with similar offences, and the taking of minor offences by lay magistrates sitting in a separate court room in the same buildings as those to be utilised by the Metropolitan magistrates and served by the same police court staff of clerks and probation officers.

Ministry of Health Report.

The Eighteenth Annual Report of the Ministry of Health was published as a Command Paper on Wednesday (H.M. Stationery Office, Cmd. 5516, price 5s. net). The report deals in successive chapters with the Ministry and the Public, Finance, Public Health, Public Assistance, Housing, Town and Country Planning, Local Government Organisation, Local Government Finance, National Health Insurance and Pensions and the Welsh Board of Health, and contains in addition to an introduction the usual statistical appendices and a full subject index. Much of the matter contained in the report is naturally of greater importance to the local government official than to the practitioner and readers desiring an acquaintance with the wealth of information provided must be referred to the report itself. There are, however, many points of interest to the practitioner, and these it is proposed briefly to indicate, in accordance with our usual practice, in our next issue.

Recent Decisions.

In *Woods, M.I.* v. *Woods, H. R. W., otherwise R.* (*Martin intervening*) (*The Times*, 29th July), Langton, J., rescinded, at the instance of an intervener as a member of the public, a decree *nisi* of divorce which had been granted on the petition of the wife. The learned judge found that, contrary to the former's denials, adultery had taken place between the intervener and the respondent, but that the petition was barred by reason of collusion being "bought and sold by a process of offer and acceptance," and that the intervener succeeded on this issue. The respondent was ordered to pay the costs of the intervener and the petitioner.

In *Rex* v. *Barker and Others* (*The Times*, 29th July), the Court of Criminal Appeal (Lord Hewart, C.J., du Parcq and Goddard, JJ.) refused application for leave to appeal against the sentence passed by Singleton, J., on twelve persons who had been convicted at Nottingham Assizes of riotous assembly in connection with a dispute at a colliery. The court intimated that none of the sentences were in the least degree excessive and that none of the elements justifying the court in revising a sentence existed in the present case.

In *Re C—, an Infant* (page 650 of this issue), Luxmoore, J., held that the proviso within s. 2 (1) of the Adoption of Children Act, 1926, rendering it lawful for the court to make an adoption order notwithstanding that the infant is less than twenty-one years older than the applicant where applicant and infant "are within the prohibited degrees of consanguinity," defined the particular degrees of blood relationship and that the foregoing phrase was not to be construed as equivalent to "within the prohibited degrees of marriage." The relaxing of the prohibition by the proviso

was not therefore limited to cases where the parties were of opposite sexes, and the learned judge authorised the adoption by a wife of her illegitimate daughter, the husband consenting as required by s. 4 (2) of the Act. It was intimated that the court had no power to approve an adoption by the husband (who also was less than twenty-one years older than the infant and not within any degree of consanguinity with the infant although in a similar degree to that of his wife of affinity) or by the husband and wife jointly.

In *Ross and Others* v. *Electrical Trades Union* (page 650 of this issue), FARWELL, J., declined to grant an injunction sought by the plaintiffs to restrain the defendant union, its officers, servants, etc., from acting on a decision of the executive council relating to the expulsion of the plaintiffs, or to grant a declaration to the effect that the said decision was *ultra vires* the union according to its rules and contrary to natural justice. It was held that a rule of the union requiring that a member charged with certain offences (the matter arose out of an unofficial strike) should be summoned to attend the meeting which was to hear and determine his case, did not entitle the member to be present from beginning to end; that the rules had been complied with, and that, there being no suggestion of *mala fides*, the court had no jurisdiction to intervene: *Maclean* v. *Workers' Union* [1929] 1 Ch. 602, applied.

In *Way* v. *Latilla* (*The Times*, 29th July), the House of Lords held that the appellant was entitled in respect of the investigation and acquisition of gold-mining concessions to remuneration at the hands of the respondent on a *quantum meruit* basis which was to be calculated with reference not to a fee, but to a reasonable participation in the profits derived from marketing the concessions. The House accepted an alternative award made by CHARLES, J., on this footing, and varied the original judgment for £30,600 (£30,000 on the footing that there was a completed contract to give the appellant an interest in the concessions which by custom or on a reasonable basis was one-third, and £600 for certain reports) and reversed the decision of the Court of Appeal, which held that there was no enforceable contract, and awarded £600 for services rendered. *Hillas* v. *Arcos*, 38 Com. Cas. 23, distinguished; *Scarisbrick* v. *Parkinson*, 20 L.T. 175, applied.

In *The "Kafiristan"* (*The Times*, 29th July), the House of Lords reversed decisions of the Court of Appeal and BUCKNILL, J., and held that the owners of a salving vessel were not debarred from receiving salvage awarded for services rendered to a vessel damaged in a collision by reason of the fact that the other vessel damaged in the collision, for which both were partly to blame, was also their own property. The proposition that no man can profit from his own wrong had no application to such a case: *The "Glengaber,"* L.R. 3 A. & E. 534, approved; *Cargo ex "Capella,"* L.R. 1 A. & E. 357 doubted. See *The "Melanie"* [1925] A.C. 246, 262.

In *I. W. Holdsworth, Ltd.* v. *Associated Newspapers, Ltd.* (*The Times*, 30th July), the Court of Appeal upheld decisions of DU PARCQ, J., to the effect that statements relating to the settlement of a trade dispute which appeared in *The Daily Mail*, *The Yorkshire Observer*, *The Manchester Guardian*, *The Sheffield Telegraph* and *The Daily Dispatch*, were incapable of a defamatory meaning in that a reasonable reader would not understand them in a defamatory sense, and judgments to this effect in favour of the respective owners of these newspapers were accordingly affirmed; but, contrary to the decision of DU PARCQ, J., the Court of Appeal held that a statement concerning the same matter which appeared in *Motor Transport* was capable of a defamatory meaning, and granted a new trial of an action between the plaintiffs and the owners of that publication.

In *Re Papworth Village Settlement* (*The Times*, 30th July), CROSSMAN, J., sanctioned the alterations of the objects, as defined in its memorandum, of an association incorporated in 1917 as the "Cambridgeshire Tuberculosis Colony"—a title subsequently altered to "Papworth Village Settlement"—so as to render it capable of dealing with persons suffering from "tuberculosis, or any other disease, illness, accident, or disability," and of establishing and carrying on various works and activities in those connections.

In *Kubach and Another* v. *Hollands and Another; Frederick Allen and Sons (Poplar), Ltd., Third Party* (*The Times*, 30th July), LORD HEWART, C.J., negatived the claim of wholesale and retail chemists (the second defendants) to recover from the suppliers (the third party) damages awarded against them in respect of personal injuries sustained by the plaintiff school-girl in the course of an experiment in a chemistry class. The jury found that the second defendants were negligent and solely responsible for the accident in that they supplied to the school for experimental purposes a mixture containing 10 parts of antimony sulphide to 1 part of manganese dioxide in place of manganese dioxide. The second defendants bought the powder as the latter but made no test or examination before re-sale, nor was it suggested to the third party that the substance might be sold for school experiments. *Bostock & Co. Ltd.* v. *Nicholson* [1904] 1 K.B. 725, applied. Compare *Donoghue* v. *Stevenson* [1932] A.C. 562, for the converse case where no opportunity for examination between supplier and consumer was afforded, and see *Grant* v. *Australian Knitting Mills Ltd.* [1936] A.C. 85.

In *Heafield* v. *Crane and Another* (*The Times*, 31st July), damages, assessed by SINGLETON, J., at £3,649, were awarded to the plaintiff against the first defendant as representing the governors and committee of a hospital and against the doctor who attended the plaintiff therein. The plaintiff, who alleged that the defendants had been guilty of negligence and breach of contract with the result that she had contracted puerperal fever, was, after the birth of her child, removed from the maternity to the general ward where there was a woman found later to be suffering from that disease, and the learned judge intimated that both the hospital authorities and the doctor had failed in their duty to the plaintiff.

In *Commissioners of Inland Revenue* v. *Paget* (*The Times*, 31st July), FINLAY, J., held that the holder of 4½ per cent. Bearer Bonds of the City of Budapest, the payment of interest of which, payable half-yearly in London in sterling, had been prohibited by the Hungarian Government except under certain conditions in pengos in Hungary, was not assessable to income tax in respect of the purchase price on sale of the bonds at a discount through agents, and the learned judge negatived the contention of the Commissioners that the deposit of pengos with the Hungarian National Bank constituted performance of the obligation to pay interest and that the proceeds of the coupons represented interest accruing which was to be included in the appellant's return for sur-tax. A similar conclusion was reached in regard to 7 per cent. Bearer Bonds of the Kingdom of Yugoslavia, the interest on which, payable in dollars in New York, had been suspended by the Yugoslavian Government, holders being given the option of payment in dinars in Belgrade subject to restrictions on the use of the proceeds or of payment of 10 per cent. of the value of the dollars and the issue of the funding bonds for the remainder, and the learned judge intimated that the commissioners were right in excluding that item. In both cases tax would be paid by the purchaser on the interest he received and the price he would pay would be diminished accordingly but tax was payable once only. *Executors of Simpson* v. *Bonner Maurice*, 45 T.L.R. 581, distinguished.

In *Cross* (*Inspector of Taxes*) v. *London and Provincial Trust Ltd.* (*The Times*, 31st July), FINLAY, J., held that the proceeds of sale of 6½ per cent. Brazilian bonds, on which the Brazilian Government suspended interest payments, issuing funding bonds in place of the coupons were not subject to tax, not being income or interest within Case IV of Sched. D to the Income Tax Act, 1918.

Criminal Law and Practice.

TWO MURDER COUNTS IN ONE INDICTMENT.

THE Criminal Appeal Act, 1907, gives no power to the Court of Criminal Appeal to give directions to lower courts when dismissing appeals, except that the court, under the proviso to s. 4 (1) of the Act may dismiss an appeal if they consider that no substantial miscarriage of justice has occurred, even if they are of opinion that the point raised in the appeal might be decided in favour of the appellant. Nevertheless the court not infrequently does give utterance to words of guidance as to what procedure is desirable, without pronouncing any particular procedure to be illegal.

This is what happened in *Rex* v. *Davis* (1937), W.N. 288, on 12th July, 1937. The appellant was charged at Assizes with two counts for murder in one indictment. The first count charged the appellant with the murder of his wife between 20th April and 29th April, while the second charged him with the murder of his niece between 21st April and 29th April, the only defence being that of insanity. The jury found the prisoner guilty.

At the trial counsel for the Crown offered either to proceed on one count only, or to frame two indictments, each of which should mention only one crime of wilful murder. Counsel for the appellant elected on behalf of his client that he should be tried on the indictment as it was. The point was however taken in the Court of Criminal Appeal that there was a fundamental objection to an indictment for murder in which two murders were charged.

The Lord Chief Justice said that it was one thing to say that a certain course was undesirable, and another to say that it went to the root of the jurisdiction. In the present case the Indictments Act, 1915 did not prohibit such a joinder, but actually contemplated in general terms the joinder of charges in one indictment. The matter was entirely one of judicial discretion, but the Lord Chief Justice expressed the opinion of the Court that a joinder of two charges of murder in one indictment was undesirable. On the facts of the two charges in question, they may well have been regarded as substantially one transaction, but if there had been two separate indictments it would have been easy and proper for the prosecution to tender evidence relating to the whole of the matter with reference to one indictment only.

In *Rex* v. *Jones* [1918] 1 K.B. 416, which was referred to by the Lord Chief Justice in his judgment, the appellant was tried on an indictment containing a count for murder and one for robbery with violence. He was convicted on both counts and received the death sentence on the murder charge and a sentence of ten years' penal servitude on the count of robbery with violence. The appeal against the murder conviction was dismissed, but the other sentence was quashed. A. T. Lawrence, J., delivered the judgment of the Court, and said: "We think that in a case of murder the indictment ought not to contain a count of such a character as robbery with violence. The charge of murder is too serious a matter to be complicated by having alternative counts inserted in the indictment. In the opinion of the Court the Indictments Act, 1915, did not contemplate the joinder of two counts of this kind." The learned judge expressed the opinion of the Court that the proper course was to have two indictments, so that the second charge might be subsequently tried if thought desirable on the failure of the charge of murder.

Section 4 of the Indictments Act, 1915, amended the law by permitting charges not only for more than one felony and for more than one misdemeanour, but also charges for both felonies and misdemeanours to be joined in the same indictment. Rule 3 of the First Schedule to the Act provides that charges for any offences, whether felonies or misdemeanours, may be joined in the same indictment if those charges are founded on the same facts or form or are part of a series of offences of the same or a similar character.

The question of joinder is entirely one for the discretion of the judge at the trial (*Rex* v. *Lockett and Others* [1914] 2 K.B. 720). The judge may, however, in the exercise of his discretion ask the prosecution to elect upon which count they should proceed (*Rex* v. *Elliott* 52 SOL. J. 535), and there is no appeal from this exercise of the court's discretion (*Rex* v. *Curtis* (1913), 29 T.L.R. 512). The Court did however indicate in *Rex* v. *Norman* [1915] 1 K.B. 341, that it was undesirable where there are several counts and several offences, for instance, of obtaining chattels by false pretences and of obtaining credit by false pretences, to try them all at the same time, inasmuch as evidence admissible on one charge may not be admissible on the other. But this only applies where the evidence admissible on one charge is not admissible on the other, and is not of general application (*Rex* v. *Pickering* (1921), 15 Criminal Appeal Reports 175).

If any authority is required for the proposition that it is not illegal to join two counts with regard to serious charges in the same indictment, *Rex* v. *Tuffin and Stone*, 19 T.L.R. 640 may supply it. In that case the two prisoners were jointly indicted for murder, and each was charged in different counts in the same indictment with being an accessory after the fact to the murder committed by the other. It was not suggested that this was illegal, and it was held that the prosecution were not bound to elect on which charges they would proceed. There does not appear to be anything in the Indictment Act, 1915, which nullifies the effect of this case.

The case of *Rex* v. *Davis* therefore will in the future govern the practice with regard to the joinder of serious counts in one indictment, but as the Lord Chief Justice rightly remarked, "the matter is entirely one for the discretion of the Court."

QUARTER SESSIONS AND BORSTAL SENTENCES.

THE Court of Criminal Appeal recently considered the duty of courts of quarter sessions in considering a case in which a prisoner is committed from a Court of Summary Jurisdiction with a view to being sentenced to detention in a Borstal Institution (*Rex* v. *Riordan* (1937), 26 Criminal Appeal Reports 30).

In the case before the Court, counsel was not instructed to prosecute, nor was it the practice to instruct counsel to prosecute in such cases at the quarter sessions at which the prisoner had been sentenced. A statement was made by the clerk of the court to the magistrates of the circumstances in which the appellant had been committed, but this was not made within the hearing of the appellant. A police officer gave the dates of three previous convictions, and stated the offences of which the appellant had been convicted, and also gave evidence of his home conditions, but no evidence was given as to the nature of the offence of which he had been convicted. The father of the appellant addressed the court but the appellant was not asked whether he wished to speak.

Under the Criminal Justice Administration Act, 1914, s. 10 (1), as amended by the Criminal Justice Act, 1925, s. 46, on the summary conviction of a person for any offence for which the punishment is imprisonment for one month or upwards without the option of a fine, the court may, if satisfied of certain matters, in lieu of passing sentence, convict the offender to prison until the next assizes or quarter sessions, whichever is more convenient, and the court of assizes or quarter sessions must then inquire into the circumstances of the case, and if it thinks expedient may pass sentence of detention in a Borstal Institution.

The magistrates at petty sessions must be satisfied (a) that the offender is not less than sixteen or more than twenty-one years of age; (b) that the offender has been previously convicted, or previously discharged on probation and failed

to observe a condition of his recognizance and (c) by reason of his criminal habits or tendencies or associations with persons of bad character it is expedient to subject him to discipline of the Borstal type.

In giving the judgment of the court quashing the sentence of three years' detention in a Borstal Institution, Swift, J., said : " the whole foundation for the exercise of that jurisdiction is that the court which passes sentence should inquire into the circumstances of the case." His lordship cited *Rex* v. *Holding* (1934), 25 Criminal Appeal Reports 28, decided on a similar provision in the Vagrancy Act, 1824, where the Lord Chief Justice said (at p. 30) with regard to the duty of Quarter Sessions : " Their first duty is to examine into the circumstances of the case and their second is to consider the appropriate sentence." He added that nothing could make a person accused of crime feel more uncomfortable about the justice which is being administered to him than to see, without being able to hear, the clerk of the court obviously making some communication about him to the magistrates who are going to deal with his case. Justice should not only be done, but should be seen to be done. It might be added that young persons committed under the 1914 Act to quarter sessions should have an equal right to cross-examine the police officer called to give evidence about their antecedents and associations, as the Lord Chief Justice said persons committed under the Vagrancy Act, 1824 should have, and as indeed counsel exercises on their behalf when the young person is in the happy position of being able to brief counsel.

The fact that more often than not, young persons committed under s. 10 (1) of the Criminal Justice Administration Act, 1914, have not the means to brief counsel, renders it the more imperative that counsel should be instructed to prosecute in such cases, so that the interests and liberty of such young persons should be properly protected. (See also *Rex* v. *Cope* (1925), 18 Criminal Appeal Reports 18.) It is to be hoped, as Mr. Justice Swift said in the course of argument, that the very bad practice of not instructing counsel to prosecute in such cases will not be followed in the future.

Costs.

REGISTERED LAND.

We have from time to time received enquiries on points connected with the remuneration of solicitors with regard to registered land, and it seems that, notwithstanding the comparative simplicity of the rules, there still remains a few phases of the matter that are obscure.

The rules relating to solicitors' remuneration in connection with registered land transactions are contained in the Solicitors' Remuneration (Registered Land) Order, 1925, made under the authority of the Land Registration Act, 1925, s. 146, and the land to which the remuneration applies, as being registered land, is that which is registered at the Land Registry.

As is well known, there is ordinarily no investigating or deducing of title in respect of registered land, and the scale of costs set out in the Order is framed with this point in view. It will be evident, however, that the fact that the land is registered will not affect such matters as negotiating for sales, purchases or loans, nor will it in any way lessen the solicitor's work in connection with sales by auction, abortive or otherwise.

Accordingly, the solicitors' remuneration in connection with negotiations will be regulated by the scale applicable to unregistered land, that is, by the scale set out in Sched. I, Pt. 1, of the Solicitors' Remuneration Order, 1882, where scale remuneration is applicable, or otherwise by Sched. II of the Order of 1882. The remuneration in connection with auctions will also be regulated by the scale set out in the same Order.

In passing, attention may be drawn to the fact that the scale in Sched. I, Pt. 1, relates only to *completed* transactions, and it will be remembered that if the auction sale is abortive, and there is no subsequent effective sale, then the remuneration of the solicitor in respect of the abortive auction will be by way of detailed charges regulated by Sched. II of the Order.

Again, the scale authorised by Sched. I, Pt. 2, of the Order of 1882 will regulate the remuneration of solicitors in respect of leases or agreements for leases of registered land which are subject to the effects of registration, prior to the first registration of such leases, for up to that time the preparation of the leases will follow a similar course to that in respect of unregistered land.

Short leases at a rack rent in respect of registered land which are entered into after the first registration will also be charged for according to Sched. I, Pt. 2, of the Order of 1882, for, of course, such leases are excluded from the effects of registration, and the work entailed in the preparation or perusal of such leases will be no less because the land may be registered.

So much then for the transactions affecting registered land which are not the subject of a special scale of remuneration. We then come to the solicitors' charges for the matter of registration itself. It will be recalled that land may be registered either with an absolute or good leasehold title or a possessory or qualified title, and, whatever the title with which the land is registered, the solicitors' charges will again be by way of item remuneration. It may be mentioned here that the expression " item remuneration " is defined by r. 2 of the Order of 1925 as the remuneration prescribed by the Remuneration Order, 1882, except Sched. I ; or, in short, remuneration as authorised by Sched. II of the Order of 1882.

One is frequently asked what it would cost to register the title of property at the Land Registry, and this is a difficult question to answer, for the costs will vary with each particular case. At any rate, the solicitors' charges, apart from the Land Registry fees, would not normally amount to a very large sum, for the solicitor has only to take instructions from his client, complete the form of application, prepare a plan and copy the conveyance, attend at the Land Registry and lodge the documents and pay the fees, and subsequently attend there to obtain the certificate. In a normal and straightforward case, therefore, the solicitors' costs, as distinct from the Land Registry fees, would be somewhere in the neighbourhood of four or five guineas, assuming that the documents are of average length.

Subsequent to the first registration of property, whether with an absolute, good leasehold, possessory or qualified title, the solicitor's remuneration in respect of every completed transfer on sale, or mortgage or charge, or transfer of mortgage will be regulated by the scale annexed to the Order of 1925. The scale, it will be observed, like the scale provided by the Order of 1882, relates only to completed transactions, so that where a sale falls through or a mortgage is not ultimately granted, the solicitor will charge by way of item remuneration, see r. 2 (*g*).

There is an exception to the rule that scale remuneration is applicable to completed transactions, namely, in the case of transactions affecting land registered with a possessory or qualified title, and the title excluded from the effects of registration is investigated. In these cases the solicitors' charges will be made out on the basis of item remuneration, but notice particularly that the item remuneration is applicable to the whole transaction, and not merely to that part of the solicitors' work connected with the investigation of the title excluded from the effects of registration.

If, subsequent to the first registration, a possessory or qualified title is converted into an absolute or good leasehold title, the solicitor will again be remunerated on the basis of

item remuneration, and the cost of this work will be very much the same as the cost of the first registration.

Pressure of space compels us to leave a further consideration of this subject until our next article, when we will deal with a few examples.

Company Law and Practice.

Powers of a Receiver Appointed under Hand to Borrow on Mortgage.

THE position of a receiver appointed by the court in a debenture-holder's action with regard to borrowing on mortgage is clear. He requires, in order to do so, the leave of the court. The position, however, of a receiver of a company appointed under hand by debenture-holders is more obscure. He can, of course, borrow if the instrument appointing him authorises him to do so, and he can again clearly give as security his own right to indemnity. The difficult question is whether or not he is entitled to give a charge with assets the subject of his receivership.

It is apparent from the following cases that a power to carry on a business involves in certain circumstances a power to borrow to a reasonable amount. The case of *Byron* v. *Metropolitan, Etc., Co.*, 3 De G. & J., 123, was a case where there being no articles of association a majority of more than three-fourths in number and value of shareholders of a joint stock company present at a general meeting had passed a resolution empowering the directors of the company to borrow on debentures of the company up to a certain limit. Certain dissentient shareholders fixed a time to restrain the borrowing being carried out and in his judgment, Turner, L.J., approving the decision of Kennedy, V.-C., says: "The words of the 33rd section" (i.e., of the Joint Stock Companies Act, the section dealing with special resolutions) "indeed seem wide enough to authorise even a change in the constitution of the company . . . The fair construction, I think, is that the 33rd section enables three-fourths to make regulations of the mode of conducting the business of the company . . ." He goes on to say that he expresses no opinion whether a special resolution was or was not necessary in the circumstances. And it appears to follow from his judgment that the ordinary business of a trading company, as the company was in this case, includes the borrowing of money at least within certain limits. In the case of *In re General Estates Co.*; *Ex parte City Bank*, L.R., 3 Ch., at p. 762, Sir Page Wood, L.J., observes that corporate bodies may issue promissory notes and bills of exchange where the nature and character of their business warrants it. In *General Auction Estate and Monetary Co.* v. *Smith* (1891), 3 Ch. 432, where the question at issue was whether the company had power to borrow on mortgage, Sterling, J., held that it was a trading company and, consequently, had power to borrow. Therefore, in the case of *Australian Auxiliary Steam Clipper Co.* v. *Mounsey*, 4 K. & J. 733, where Sir W. Page Wood, V.-C., says: "It was said that looking to the objects for which the plaintiff company was established, the act complained of could not be said to fall within the scope of the corporate business, the business of this company being to make profit not by trafficking in the sale of ships but by sailing them; and that the ships being the instruments with which they carry on their trade as a company to mortgage them so far from falling within the corporate business, would be fatal to the very objects for which they were established. But I cannot conceive that a shipping company having eight vessels for the purpose of carrying on a business like this if they have occasion to buy a ninth are precluded, upon any ground of misdescription, from mortgaging any of the eight for that purpose." Sterling, J., further refers to *Byron's Case, supra*, of which he says: "that appears to be an authority, therefore, that the raising of money by debentures in the case of a trading company, simply established for the conveyance of passengers and luggage by omnibuses, is within the powers of the company, although there is no express authority conferred either by the memorandum or articles of association for borrowing."

These cases do seem to establish the proposition that, at any rate, in the case of corporate bodies a power to trade included a power to borrow, but whether a power to carry on a business in the case of a receiver appointed under hand also includes such a power is not so clear, and does not, perhaps, depend upon the same principles. The position may be that he is entitled to borrow when the instrument appointing him is silent, but has not power to charge the assets under his control, and it will therefore be of some interest to consider some of the cases where a power to sell which a receiver appointed under hand will sometimes have, includes a power to mortgage. Where there are trustees for sale and conversion with power to postpone, they may, for certain purposes, e.g., raising a charge, mortgage the property subject to the trust for its protection or improvement in value where so doing is not inconsistent with the whole purpose of the trust: *Stroughill* v. *Anstey*, 1 D.M. & G. 635. Similarly, in the case of *Re Dimmock*, 52 L.T.R. 494, a testator, by his will, gave all his real and personal estate to trustees on trust for sale and conversion, but gave his trustees power to carry on his business for such time as they should see fit, and to employ in the business all the capital which might be invested therein at the time of his decease and to increase or abridge the business and his capital therein, and in all respects to act as if they were absolutely entitled to the business. While the business was still being carried on one of the trustees advanced to the trust £2,000, which was secured by a deposit of the title deeds of the manufactory and business premises. There was a conflict of evidence, but Kay, J., in his judgment, assumed that the money was lent as an advance for the purpose of the business. The question being raised in an administration action of the testator's estate as to which the trustees had a power and made an equitable mortgage of the real estate, Kay, J., after observing that they had power to increase the capital employed in the business, goes on to say " . . . suppose the trustees had sold the estate and had got the money in their hands and they believed that in the exercise of the power it would be a proper thing to do to embark some £2,000 of that money in the business, I cannot doubt . . . that they would have a right to do so. Then, if they had a right out of the proceeds of sale, in case they should sell or when they did sell, to use the money for the purpose of the business, could they be wrong in borrowing—until security of the estate the proceeds of which they would have a right so to employ—a sum of money to be embarked in the business. Following *Stroughill* v. *Anstey*, *supra*, it was true that they were entitled to do so.

In the case of *Robinson Printing Co.* v. *Chic* [1905] 2 Ch., a receiver was held to have authority to pledge the assets in priority to the debentures, but that was one of the comparatively rare cases where the receiver was not made the agent of the mortgagor. This was the basis of the decision. As to the extent of the receiver's authority, Warrington, J., says: "Appointed as he was by the debenture-holders as their own agent and entrusted to make such arrangements as he might think expedient in their interests, I am of opinion that he had authority to pledge the assets in priority to that charge . . . and further, so far as the authority of the company was required to make such charge effectual, he had that authority."

In the ordinary case, however, when a receiver (who is not the agent of the debenture-holders) has power to sell, his position is different from that of a trustee for sale, and it may well be that his power to sell would not entitle him to

mortgage the property to be sold, and, in any case, it would not, I think, on the strength of the cases referred to above, be a prudent course to lend money on mortgage to a receiver appointed so as to be the agent of the mortgagor, though, apparently, it may safely be done where he is the agent of the debenture-holders, on the authority of the case last cited. See also *Deyes* v. *Wood* for a similar case of a receiver being agent of the debenture-holders.

I hope, shortly, to deal at some length with the practice which has recently grown up of floating new companies as small private companies, and shortly afterwards increasing its capital and turning it into a public company. Two of the consequences of taking this procedure, which appears to be becoming more frequently resorted to, is that the original share capital of the new company may be held by an existing company and, on a transfer of assets, advantage may be taken of s. 42 of the Finance Act, 1930, and also, since on its incorporation, the company is a private company, it may commence business immediately and proceed to exercise its borrowing powers.

A Conveyancer's Diary.

[CONTRIBUTED.]

Intestacy: The Widow's £1,000.

MY attention has been called to the case of *Re Saunders* [1929] 1 Ch. 674, which deals with the sum of £1,000 and interest at 5 per cent. thereon given to a surviving spouse under the A.E.A., 1925.

It is quite clear what this case decided, but its implications seem to raise possibilities of trouble. The facts are very simple. The intestate died in 1926 without issue. He left a widow, who became sole administratrix. Subject to her rights, the persons entitled to the estate under the statute were three brothers and four sisters. In 1929 the summons came on before Eve, J., raising various points. At that date neither the £1,000 nor the interest upon it had been paid. "The only question raised calling for a report was whether interest payable on the sum of £1,000 under s. 46 of the A.E.A. was payable out of the *corpus* or the income of the intestate's estate."

Section 46 reads as follows: "The residuary estate of an intestate shall be distributed in the manner or held on the trusts mentioned in this section, namely: (1) If the intestate leaves a husband or wife (with or without issue) the surviving husband or wife shall take the personal chattels absolutely, and in addition the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of one thousand pounds, free of death duties and costs, to the surviving husband or wife with interest thereon from the date of death at the rate of five pounds per cent. per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—(*a*) If the intestate leaves no issue, upon trust for the surviving husband or wife during his or her life; (*b*) If the intestate leaves issue, upon trust, as to one half, for the surviving husband or wife during his or her life, and subject to such life interest . . ."

The learned judge read the section to this point, and then stated the question for decision. He then concluded a very short and clear judgment as follows: "I think the answer is obvious. The £1,000 with the interest thereon is charged upon the residuary estate other than the personal chattels and it is only 'subject to providing for that sum and the interest thereon' that there can be any surplus available for investment as an income producing fund. In my opinion, therefore, the £1,000 and the interest thereon must be paid out of the *corpus* of the residuary estate. Were it otherwise, the surviving spouse would be paying the whole or half the interest according as the income of the net residue fell to be dealt with under paragraph (*a*) or (*b*)."

With this decision one must, of course, respectfully agree. But it is a decision that the interest on the £1,000 is charged on capital and nothing more. It has been suggested that a strange result follows from the application of the rule. For the suggestion is that if the surviving spouse is (as is usually the case) sole personal representative, he or she can take the whole income (or half the whole income, as the case may be) of the estate throughout his or her life, and still be at the end of it a secured creditor of the estate of the intestate not only for the £1,000 (as to which there can be no dispute) but as to the 5 per cent. interest through the whole period. There does not seem to be anything to compel the personal representative to pay or appropriate the £1,000 before any given time, and the interest at 5 per cent. is a charge on *corpus*. Some such difficulty seems to have been present in the mind of counsel for a brother of the intestate in *Re Saunders*. For he is reported as having said, "at any rate, as from the end of the first year from the death, the widow cannot take the income of the whole estate and the interest of £50 on the £1,000 charged on the estate as well." The suggestion seems to have gained some currency, and if it is correct would appear to be most unreasonable.

It is respectfully submitted that such a suggestion is not correct, and that no warrant can be found for it in the Act or in *Re Saunders*. We may agree that there is no compulsion to pay or appropriate the £1,000 in any given period. We may also respectfully accept the decision of the court in *Re Saunders*, namely, that the £50 a year interest is a charge on *corpus*. But these premises do not justify the conclusion that the surviving spouse may take the whole (or half) the income for his or her whole life, and the £50 a year as well. Section 46 first gives the charge for £1,000; it then adds to that charge a sum of interest. Then it says: "subject to providing for that sum and the interest thereon" the residue is to be held on certain trusts which give a surviving spouse the life interest in the whole in the absence of issue. The important words are those which we have quoted beginning with "subject thereto." They are cited by Eve, J., in his judgment in *Re Saunders*, and they are just as vital for the present purpose. The life interest arises only in what is left after providing the £1,000 and the interest. So long as the interest is unpaid it becomes a further charge against *corpus* and the life interest only arises in what is left from time to time. Thus, if the total net estate is £2,000, the surviving spouse is entitled at the moment of death to £1,000, and the life interest in the other £1,000. A year later, the 5 per cent. interest has accrued for a whole year, assuming, of course, that the £1,000 is unpaid, and the position therefore is that he or she is at that moment entitled to £1,050 and to the life interest in £950. And so on from year to year so long as the £1,000 and interest remains unpaid. At the end of each year one must shift £50 from the capital of the fund in which the life interest exists to answer a further year's interest on the £1,000. Such a result would appear to be in harmony both with the section and *Re Saunders*, and also to be inherently just. It is therefore submitted that it is correct. A difficulty might be raised if it were suggested that the interest on the £1,000 accrues from day to day, and not from year to year. That suggestion is in fact correct, and strictly speaking the accounts should be made up to provide interest every day. But such a course would involve great trouble and expense, and will therefore presumably be inexpedient. As an objection to what we have suggested to be the true view, it appears to be incorrect, since the accounts could, in theory, be done daily, if so foolish a thing were asked for.

Income Fees of Corporate Trustees.

In two articles in this column I called attention about a year ago to the decisions in *Re Hulton* and *Re Riddell*, which are now reported in [1936] Ch. 536 and 747 respectively. From these cases it appeared that where an annuity was given by a testator out of his estate the income fees of a corporate trustee, whether the Public Trustee or not, were payable out of residue, and not out of the annuity or the capital fund, if any, on which it was charged. Nothing was said in these cases as to the position in respect of similar fees upon settled legacies. But in as much as an annuity, or at least an annuity charged upon a capital sum whose income exactly covers the annuity, is from some points of view indistinguishable from the life interest in a settled legacy, it would be possible to suppose that the same rule applied, and that in these cases also the income fee of the corporate trustee would come out of residue. It has now been decided, however, that this view is incorrect, the decision being that of Crossman, J., in *Re Roberts' Will Trusts* [1937] Ch. 274. In that case it was assumed that the *acceptance* fee (a capital fee) came out of residue, but the learned judge expressly decided that the income fee came out of the income of the settled legacy, and that the withdrawal fee (another capital fee, charged when the fund is ultimately paid out) came out of the capital of the settled legacy. This decision deserves notice, for it is a useful one; and in consequence of it, it is unnecessary to apply the rather troublesome rule laid down in *Re Hulton* and *Re Riddell* to settled legacies.

Landlord and Tenant Notebook.

Misrepresentation by Intending Tenant.

Generally speaking, when any question of misrepresentations made in the course of negotiations for a lease is raised, it is the tenant who is the aggrieved party, the landlord or his persuasive agent the offender. But, if the condition of property is of importance to a tenant, the character of the tenant is of great interest to the landlord. Much has been heard of this in recent years in connection with licences to assign, e.g., in *Houlder Bros.* v. *Gibbs* [1925] Ch. 575, C.A., when Warrington, L.J., said that any objection, to be reasonable, must concern either the personality of the intended assignee or the user which he is likely to make of the property. Obviously, similar considerations apply when a lease is to be granted, but one must go rather further back to find decisions illustrating the position.

In an Irish case, *O'Herlihy* v. *Hedges* (1803), 1 Sch. & Lef. 123, Lord Redesdale, C., put the matter very clearly. The facts were that the plaintiff, a tenant who had got into difficulties, conveyed his interest to a relation, actually in trust, but without mentioning that circumstance in the deed. The relation applied for and obtained an agreement for a new lease and then decided to remain in possession, whereupon the plaintiff filed a bill asking for accounts from his relation and specific performance of the agreement for a lease against the landlord. His lordship dealt with the latter claim as follows: "There is a great deal to be considered with respect to contracts of this kind. Here is a contract for the occupation of land, in which contract the solvency and the character of the tenant are intimately concerned; they are not so important, however, as if the lease were at a rack-rent—there, the solvency and character of the tenant are everything. Now, suppose a trustee was to contract for a lease at a rack-rent, and the *cestui que trust* filed a bill for specific performance: says the Defendant 'I agreed with this man a good tenant—a solvent man, and skilled in the improvement of ground; you are poor—you are ignorant of the cultivation of land; and because he happens to be your trustee, though there is no trust apparent, must I put upon my estate a tenant who will ruin it? 'Can this be equity? I think not."

Misrepresentation justifying refusal of specific performance is not limited to cases in which an intending tenant gets someone else to negotiate on the footing that the negotiator wants the property himself. An older case than the above, *Willingham* v. *Joyce* (1796), 3 Ves. 796, dealt with a state of affairs not uncommon at any time, and incidentally shows that people who attach too much value to references may experience disappointment. (As to referees' obligations, see the recent article in the issue of 12th June, Vol. 81, p.468.) The plaintiff, who sued for specific performance, had been told, when he applied for the house, that the defendant would not let it to anyone who let lodgings; he answered that he did not wish to, being an attorney with a household consisting of himself, his wife, his son, his clerk and servants; he added that he had occupied the house of one, Mrs. C, for nine years, and was leaving it because she wanted it for her own occupation; that he paid rent quarterly; that Mrs. C would give him a character; that he must have an answer that evening, as he was going away. In fact, his tenancy of Mrs. C's house had been a short one; he had let lodgings there; she had had to distrain for rent; he had been bankrupt. Mrs. C did give him "a character," but did so, as she stated in evidence, in order to get rid of him. The defence to the claim was fraud, misrepresentation and insolvency; but on the court intimating that no decree would be granted, the parties came to an arrangement.

The effect of fraudulent concealment of intended user was gone into in *Bonnett* v. *Sadler* (1808), 14 Ves. 526. The plaintiffs, a firm of coachmakers, had agreed to let premises adjoining their own to the defendants, who had first described themselves as shoemakers, and then said that that was a mistake and that they carried on no trade and wanted the premises for use as a private house. The agreement provided for a covenant against offensive trades, and also for an expenditure by the tenants of £100 in repairs under the direction of the plaintiffs. Possession was given, and the defendants then set about rebuilding the premises and adapting them for use as a coachmaker's business. The plaintiffs sought an injunction, relying on two grounds: the premises were in a dangerous condition, and could not stand such operations; and there would be a complete alteration of the subject-matter of the intended lease. Lord Eldon, C., granted the injunction on those grounds. It will be observed that at that stage little had been said about misrepresentation; on the other hand, the intended tenants were not asking for specific performance. But, later, they applied for the injunction to be dissolved, arguing that the agreement for a covenant against offensive trades confirmed that they were entitled to exercise their calling of coachmakers. On this Lord Eldon said that whatever might be the position if specific performance were sought, the agreement had been procured by studious, artful and what the court called fraudulent concealment of the very purpose of obtaining the lease, which the plaintiffs would not have granted except under the effect of concealment; and his lordship referred to the agreement to lay out £100 under the plaintiffs' direction as a device by which the attention of the plaintiffs had been distracted.

Misrepresentation by a tenant may effect the termination of his liability, and a surrender so negotiated was held to be void in *Bruce* v. *Ruler* (1828), 2 Man. & Ry. 3, which may well, however, be considered an unsatisfactory decision. The defendant was yearly tenant of the plaintiff and proposed someone else as a tenant; the plaintiff did not ask and the defendant knew but did not say that the party introduced had compounded with creditors, and the plaintiff agreed to the substitution. When he became aware of the truth he sued for use and occupation, claiming that the surrender was vitiated. The court upheld this contention, holding

that the keeping back was legally speaking a fraud ; Bayley, J., adding that it was very desirable, if possible, to *make* people honest. The former proposition strikes one as difficult to defend ; where was the duty to disclose and why did not the landlord tell the defendant to assign ?

The decision in *Gray* v. *Owen* [1910] 1 K.B. 622, is more easily reconciled with general legal principles. The defendant, a naval officer, had taken a house from the plaintiff under an agreement entitling him to determine the tenancy by a quarter's notice in the event of his being ordered away, (from Portsmouth) by the Admiralty. During the term, he was ordered away, but got the order cancelled on the ground of his wife's ill-health. After the cancellation he exercised the power, believing he was entitled to do so. After he had left, the landlord found out what had happened and, not having been able to let the house in the meantime, sued for two quarters' rent. It was held that the notice to determine was bad ; but that a surrender by operation of law had been effected : consequently, there was no liability for rent. But it was also held that the power to determine implied an obligation on the tenant's part not to give notice except when under orders to leave for abroad, which obligation the defendant had broken. The measure of damages was the amount lost by not being able to let the house, namely the two quarters' rent sued for.

Our County Court Letter.

THE AGE OF USED MOTOR CARS.

In a recent case at Newport County Court (*Fine* v. *F. N. Morgan & Co. Ltd.*) the claim was for £55 as damages for breach of warranty. The plaintiff's case was that he bought a car in May, 1936, for £210, on the representation that it was a 1936 model, whereas it was a 1935 model. The defence was that the car was sold as a 1935 shop-soiled car ; that the difference between the 1935 and 1936 models had been pointed out to the plaintiff at the time ; and that a 1936 car could not have been sold below the current price for the year. His Honour Judge Thomas held that part of the inducement to buy the car was that it was a 1936 model. Judgment was given for the plaintiff for £30 with costs. Compare a note under the above title in the County Court Letter in our issue of the 17th April, 1937 (81 Sol. J., 312).

OPTIONS TO PURCHASE HOUSES.

In the recent case of *Needham* v. *Haydon*, at Weston-super-mare County Court, the claim was for possession and £28 11s. arrears of rent. The plaintiff had let a house to the defendant from the 29th September, 1935, for five years at a rent of £56 a year. A distress had been levied for rent, but the defendant contended that the levy was excessive and had refused to pay any more rent. The defendant's case was that the lease contained an option to purchase, but he did not wish to remain, and would release the option on payment of £25. The probability was, however, that he would shortly be able to exercise the option and purchase the house. His Honour Deputy Judge Wilshire observed that the lease provided for a right of re-entry on non-payment of rent for twenty-one days. The right had arisen, and judgment was given for the plaintiff, with costs.

In the recent case of *Beckensall and Wife* v. *Smith*, at Lymington County Court, the claim was for possession and £4 8s. 9d. mesne profits. The defendant denied that there was any tenancy, and contended that he was in possession under an agreement for sale, in respect of which he counter-claimed specific performance. The defence to the counter-claim was that there was no note or memorandum within the Law of Property Act, 1925, s. 40 (1) and that £5, paid by the defendant, was not in part performance of the alleged contract. The onus being on the defendant, his case was that the plaintiffs, in order to avoid death duties, had suggested executing a deed of gift of the house in his favour. The defendant accordingly drew up the necessary documents to the best of his ability. His Honour Judge Cave, K.C., was not satisfied that the parties had ever come to an agreement. The defendant had acted in good faith, but the documents drawn up by him were not sufficiently definite to constitute any evidence of an agreement in writing. By consent, judgment was therefore given for the plaintiffs on the claim and counter-claim, with possession in three months.

THE QUALITY OF BARLEY.

In the recent case of *E. G. Clarke & Son* v. *Abell*, at Halesworth County Court, the claim was for £10 10s. 4d. as damages for breach of warranty. The counter-claim was for £44 11s. as the balance of the price of 60 coombs of barley at 18s. 6d. per coomb. The plaintiffs were buyers of malting barley, and, having bought barley from the defendant, they re-sold it to R. & W. Paul, Ltd., maltsters, of Ipswich. The latter firm rejected the barley on the ground that it corresponded neither with the sale sample nor the bulk sample. Their case was that the barley delivered had become mouldy and matted ; some was black and some grey ; and germination had set in. The defendant denied the breach of warranty, and his case was that the amount found due (if any) should be set off against the balance due to himself. The defendant had not been told that the barley was for malting, and it was good for grinding. Owing to its being kept in a granary, the barley might deteriorate through damp, but the risk was on the plaintiffs, as soon as their salesman had bought the barley. His Honour Judge Hildesley, K.C., held that the barley was at the defendant's risk, until delivery at the plaintiffs' premises. The barley was unmerchantable, although there had been no fraud by the defendant. Judgment was given for the plaintiffs on the claim and for the defendant on the counter-claim, with costs in each case.

Books Received.

Report of the Departmental Committee on Courts of Summary Jurisdiction in the Metropolitan Area. 1937. London : H.M. Stationery Office. 9d. net.

A Century of Progress. 1937. London : The General Life Assurance Company.

Mews' Digest of English Case Law. Quarterly Issue, July, 1937. By G. T. Whitfield Hayes, Barrister-at-Law. London : Sweet & Maxwell, Ltd. ; Stevens & Sons, Ltd.

English Law from the Foreign Standpoint. By Hans W. Goldschmidt, Dr.Jur., Dr.Sc.Pol. 1937. Royal 8vo. pp. xviii and (with Index) 258. London : Sir Isaac Pitman and Sons, Ltd. 21s. net.

The Union of England and Wales. By His Honour Judge Sir Artemus Jones, K.C., 1937. Demy 8vo. pp. 31. London : Sir Isaac Pitman & Sons, Ltd. 1s. net.

The Journal of Criminal Law. No. 3. July, 1937. London : The Journal of Criminal Law. 5s. net.

Ministry of Health Statement showing the Number of Persons in Receipt of Poor Relief in England and Wales in the Quarter ending March, 1937. London : H.M. Stationery Office. 6d. net.

Eighteenth Annual Report of the Ministry of Health, 1936–37. London : H.M. Stationery Office. 5s. net.

Italy and the Problem of Self-Sufficiency. By Benito Mussolini. 1937. London : British Italian Bureau. Price 2d.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Architects' Final Certificate.

Q. 3474. Our client, A, who is a builder, erected about two years ago a house for B, in connection with which C & Co. were architects. After the house was built some questions were raised regarding certain matters connected with the building, which our client put right. Owing to these questions the architects' final certificate was not issued when the house was originally completed. Although A previously, and we since, have applied to C & Co. for the final certificate and details of the amount due to A under the contract, it has not been possible to elicit any reply. A informs us that there was a contract for the building. He is unable to give us particulars, but states that the contract was with C & Co. We shall be glad of your advice as to whether A has any remedies by which he can force C & Co. to issue a final certificate or otherwise disclose the position so as to obtain the balance of the money due from B. Any reference to authorities will be appreciated.

A. The builder's remedy normally is to claim damages for breach of contract from the building owner (B in the present case) if the final certificate is unreasonably withheld. See *Mackay* v. *Dick* (1881), 6 App. Cas. 251, and *Roberts* v. *Bury Improvement Commissioners* (1870), L.R. 5 C.P., at p. 331. In the present case, however, it is not certain that there was any contractual relationship between A and B. Apparently C & Co. first employed A and then sold the house to B. In that case A's remedy would be against C & Co. It will therefore be necessary to ascertain with whom the contract was made, and whether the issue of the final certificate was a condition precedent to payment. The latter circumstance will not disentitle A to sue, if there has been found any collusion in withholding the certificate. See *Waring* v. *Manchester, etc., Railway Co.* (1850), 2 H. & Tw., at p. 248, and *Macintosh* v. *Great Western Railway Co.* (1850), 19 L.J. (Ch.) 374.

Re-Entry for Non-Payment of Rent.

Q. 3475. Clients of ours have purchased the freehold reversion of certain leasehold premises held under ninety-nine-year leases. Notices have been served under s. 146 of the L.P.A., 1925, requiring the leaseholders to remedy breaches of covenant contained in the leases. The premises consist of a number of dwelling-houses, all of which, with the exception of four, which are occupied, are in such a state of disrepair that practically only the shell of the buildings remain. The notices have expired and it is proposed to re-enter into possession and forfeit the leases, to which no objection is anticipated by the lessee or the mortgagee. The difficulty lies in connection with the four occupied dwelling-houses which have not been registered as decontrolled under the Rent Restrictions Acts. Can you please suggest to us what course, if any, can or ought to be taken with regard to these houses. We understand that no rent has been paid to the late lessee for many months. The purchasers of the freehold reversion happen to be a local authority.

A. The fact that the premises have not been registered as decontrolled will not prevent the reversioners from obtaining an order for possession. See the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1) and 1st Sched. (*a*). The only difficulty is that the court must be satisfied that it is reasonable to make an order. In view of the probable state of disrepair, and the amount of arrears, it appears reasonable to make an order for possession. Possibly the Housing Act, 1936, s. 156, may be of assistance.

Settlement of Personalty dated in 1890—Power to purchase Ground Rents with power to re-sell same—Conveyance pre-1926 of Ground Rents which were conveyed to the Trustees without disclosing the Trusts—Whether a Trust for Sale can now be created with the consent of the Life Tenant.

Q. 3476. By a marriage settlement made in 1890, the husband, A, settled a sum of £3,000 and a life policy for £500 on trusts to pay the income to the wife, B, for life, then to A for life, and then, as to capital and income, to the children, and the settlement contained a power for the trustees to invest any part of the trust funds in the purchase of ground rents, "with power to sell the same." Freehold ground rents have been bought with part of the trust funds and the conveyances thereof were made to the trustees as joint tenants without disclosing any trust and not stating that they held the property on trust for sale. It would appear, therefore, that on 1st January, 1926, the legal estate in the ground rents became vested in B as tenant for life, since they were not held in trust for sale, but only subject to a power of sale. No vesting deed has been executed. The point on which we should like your opinion is: Can a supplemental deed now be executed by A and B and the trustees declaring that the trustees hold the ground rents on trust for sale so as to avoid the necessity on the death of B or A of taking out probate of settled land.

A. We do not think this can be done without the concurrence of all interested parties. The settlement did not contemplate a trust for sale, but merely a power. Section 32 of L.P.A., 1925, is not in point owing to the date of the settlement. If B survives A, only a general grant in the estate of B will be needed.

The Companies Act, 1929, s. 116.

Q. 3477. Section 116 of the C.A., 1929, which provides for the representation of companies at meetings of other companies and of creditors, is silent as to the necessity or otherwise for a company representative at any meeting to produce his authority to act. At a recent general meeting of a company the chairman did not call upon the representative to produce any such authority, nor do we gather that he was asked to do so by any member present. We shall be glad of your opinion as to whether it is possible to attack the validity of any votes cast by such representative merely on the ground that he did not produce his authority at the meeting.

A. The section in question does not provide that the authority shall be embodied in any documentary form. The position is different from that under Table A, Arts. 58 to 62, dealing with voting by proxy. Provided that the representative, on the occasion in question, really was authorised, his votes cannot be challenged merely by reason of the chairman's omission to ask for production of the representative's authority. The question is therefore answered in the negative.

To-day and Yesterday.

LEGAL CALENDAR.

2 AUGUST.—The climax of George Hayward's courtship was to stand in the dock at the Shrewsbury Assizes on the 2nd August, 1833, on a charge of murder. The trouble had been that the mother of the object of his affections had not approved of his visits and had told her son to turn him out of the house. Her commands had been obeyed with much zeal and a kick or two and the discomforted suitor's hat had got left behind. He had gone home in a fury, taken up a knife, returned to claim his property and fatally stabbed his assailant in the stomach. He was found guilty of murder and condemned to death.

3 AUGUST.—On the 3rd August, 1668, Evelyn records: "Mr. Bramstone (son of Judge B.) my old fellow-traveller, now Reader at the Middle Temple, invited me to his feast, which was so very extravagant and greate as the like had not been seene at any time. There were the Duke of Ormond, Privy Seal, Bedford, Belasys, Halifax, and a world more of Earles and Lords." Thus did Francis Bramston, afterwards Baron of the Exchequer, more than discharge the obligation of lavish hospitality which lay on the Readers of the Inns of Court. It was during the turmoil of the Civil Wars that he and Evelyn had fallen in with each other in Italy.

4 AUGUST.—What line would you adopt if you had to defend a monk who by means of false keys had opened the safe of his monastery, abstracting 40,000 francs worth of property and had afterwards swum across a river, leaving his monastic dress on the bank so as to suggest the idea of suicide? To find a defence was the task set the counsel appearing for Pierre Brochard, a lapsed Dominican, who was tried for theft at Bordeaux on the 4th August, 1886. He boldly argued that there had been no robbery, as all things were held in common in the monastery, and contended that his client had only taken prematurely his share of the fund. Despite the judge's protests, the jury adopted this theory and acquitted the prisoner.

5 AUGUST.—About the same time, another "criminous clerk" was leniently treated by a French jury, when M. l'Abbé Auriol, parish priest of Nohedes, in the Pyrénées Orientales, was tried for murder. He had poisoned two ladies from whom he had obtained wills in his favour. On the very considerable proceeds he had intended to marry a schoolmistress with whom he was planning to elope. Reluctant to send a priest to the guillotine, the jury found extenuating circumstances when they convicted him on the 5th August, 1882, and he was sentenced to penal servitude for life.

6 AUGUST.—On the 6th August, 1890, a unique scene was enacted at the Lewes Assizes. Mr. Baron Huddlestone had arrived to open the Commission, but was suddenly seized with a severe attack of gout which prevented him from leaving his bed. Nevertheless, he determined to charge the Grand Jury, and summoned them to his room. So, with the High Sheriff, and the Under-Sheriffs on one side and the Clerk of Assize on the other, the judge, propped up with pillows, delivered his charge clearly and skilfully. Meanwhile the doors were left open that any of the public who could crowd in might know that it was a public court.

7 AUGUST.—In 1912 the suffragettes were busy, and when Mr. Asquith, then Prime Minister, visited Dublin in July, a group of them marked the occasion by trying to set fire to the Theatre Royal at the end of the performance. On the 7th August the two principal culprits, Mrs. Mary Leigh and Miss Gladys Evans, were sentenced by Mr. Justice Madden to five years' penal servitude. The former, however, secured a speedy release by a forty-two days' hunger strike.

8 AUGUST.—On the 8th August, 1828, William Corder was tried in the Shire Hall at Bury St. Edmunds for the famous "Murder in the Red Barn."

THE WEEK'S PERSONALITY.

More than one William Corder has been presented to the world. There is the "sort of blend of Adonis and Beelzebub" portrayed in most of the melodramatic versions of "The Murder in the Red Barn." Then there is William Corder as he saw and described himself in a matrimonial advertisement in the *Sunday Times*: "A private gentleman, aged 24, entirely independent, whose disposition is not to be exceeded . . . a sociable, tender, kind and sympathising companion." Finally, there is the William Corder who sat in the dock, sobbing and sighing and rolling his eyes in cowardly agony as the case was piled up against him, the stoutish young Suffolk farmer who, having got himself entangled with the far from virtuous daughter of a local mole catcher, promised to marry her, lured her to his barn and shot her dead, burying her under the earthen floor. With plausible lies as to her whereabouts he put off her parents, finally retreating to London and marrying a wife through a newspaper advertisement. Such was the rather commonplace figure which has attained a sort of apotheosis through the melodramatic transformation of his sordid story, a distortion which has become more real than actual fact.

UNDUTIFUL JURORS.

At the Swansea Assizes recently, Mr. Justice Greaves-Lord delivered a weighty little homily on the reprehensibility of attempting to evade jury service by subterfuge. It was on a matter of that sort that Mr. Justice Hannen was once hoaxed. A juryman dressed in deep mourning and wearing a grave and downcast expression, stood up and begged to be exempted from service on that day, explaining that he was deeply interested in the funeral of a gentleman at which it was his desire to be present. The judge courteously and considerately made no demur about discharging him, and he left the court. After he had gone, the registrar interposed: "My lord, do you know who that man is that you exempted?" "No," said Hannen. "He is an undertaker," was the reply. That is said to be the only occasion on which that judge, who was a very strict ruler of the Divorce Court, was ever tricked.

CORRESPONDENCE ON THE BENCH.

At the Lewes Assizes recently, Mr. Justice Hawke suspended the hearing of a case for a few moments while he wrote a letter, saying that he had to send a few lines before the post went. In former times some judges were not so punctilious as to interrupt evidence or argument for such a matter. Lord Eldon once he had got the general hang of a contention would pay no further heed and would settle down to write a gossiping letter to his daughter or his sister-in-law. Nevertheless, he studied to give the impression that he was taking notes of the arguments. Lord Brougham used quite openly to deal with his correspondence in court, receiving and reading letters and writing and despatching answers, meanwhile listening to counsel and asking them questions. Once irritated at seeing the Chancellor writing, Sir Edward Sugden, afterwards Lord St. Leonards, protested by stopping his speech. "Go on, Sir Edward, I am listening to you," said Brougham. "I observe your lordship is engaged in writing and not favouring me with your attention," replied Sugden. "I am signing papers of mere form," said the judge. "You may as well say I am not to blow my nose or take snuff while you speak." Sir Edward sat down in anger.

Mr. Charles Costeker, solicitor, of Bournemouth and formerly of Darwen, Blackburn and Lytham, left £103,339, with net personalty £102,175.

Notes of Cases.

Court of Appeal.

Hunt *v.* Rice & Son Ltd.

Greer, Slesser and Scott, L.JJ. 14th July, 1937.

Practice—Pleadings—Plaintiff's Application for Leave to Amend—Refusal—Effect—R.S.C. Ord. XXVIII, r. 1.

Appeal from a decision of MacKinnon, J.

In 1935, the defendants were building five blocks of flats on the site of certain old buildings. Along the front of one of the blocks a drain was to be dug and laid. In the digging of the trench one side was provided by an old wall of a previous building extending to the bottom and perfectly firm, and the other side was earth and gravel. When the trench was virtually complete, a red-brick wall running across it at one end was cut through with a pneumatic drill. Shortly after, three men were finally clearing out some rubbish from the bottom of the trench when, without warning, part of the side which was earth and gravel fell in, the accident occurring on the 23rd January, 1935. One of the men having died of his injuries, his widow sued the defendants alleging negligence by the defendants and claiming damages under the Fatal Accidents Act, 1846, and alternatively, under the Employers' Liability Act, 1880. The defendants denied negligence, and contended that s. 1 of the 1880 Act did not apply. When the statement of claim was drafted, it was not known to the plaintiff that there was evidence of any machinery within regulation 46 of the Building Regulations, 1926, having been used on the premises at the material times so as to bring the work within the scope of those Regulations. Subsequently, however, it was ascertained that there was evidence that there had been cement mixers and machinery for hoisting purposes used. Consequently, on the 22nd January, 1937, before the trial of the action, a letter was sent to the defendants inviting them to permit an amendment of the pleadings so as to permit the plaintiff to rely on a breach of the statutory duty under the Building Regulations, 1926, in that the sides of the trench were not timbered as required by regulation 46. On Monday, the 25th January, 1937, the case came on for trial. Leave to amend the pleadings was refused and MacKinnon, J., having held that the defendants were not negligent in not having timbered the sides of the trench, gave judgment in their favour. The plaintiff appealed.

Greer, L.J., in granting a new trial, said that the defendants were putting a new building where there had been an old one which had required drainage. In the circumstances of the case it was for them to satisfy the Court that they had some excuse for having failed to examine the adjoining ground before they dug the trench so as to ascertain that there was no risk of its falling in. As to the application to amend the statement of claim, the learned judge might well have been entitled to consider that since the issue of the writ, and before the writing of the letter, there had been ample opportunity to raise the point in question, and that inasmuch as it had not been raised, the pleadings should not be amended. But here a new trial was being ordered and both sides should have an opportunity of amending their pleadings, and calling further evidence. Thus the defendants might be able to show that they had such instructions from their architect as justified them in thinking that they need not examine the ground and that might be an answer to the allegation of negligence. By the notice of appeal all that was asked for was a new trial and this should be granted.

Slesser, L.J., agreed in allowing the appeal, and said that the learned judge had misdirected himself in not taking sufficiently into consideration a failure to take steps mentioned in s. 2 (1) of the 1880 Act. The amendment of the pleadings did not arise as a separate question, but on that point his lordship was not quite in agreement with Greer, L.J. Though two years had elapsed, it could not be maintained that the plaintiffs working on a large building were unable with the aid of their plant book and other material to say whether or not they had used a mechanical hoist on this building. If an adjournment had been asked for, that would have dealt with any possible difficulty. There was no reason why the important question sought to be raised by the amendment should not have been before the court. Though primarily a judge had a discretion in granting or refusing an amendment there might be occasions when the granting would cause little difference to the parties in the conduct of the case, while the refusal would cause injustice in that the real issue would not be determined. Then the Court of Appeal should grant an amendment. The amendment here could have been made without injustice to the defendants.

Scott, L.J., agreed.

Counsel: *Carr*, K.C. and *M. O'Sullivan*; *Paull*.

Solicitors: *Musson & Co*; *Charles St. A. Butcher*.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—Chancery Division.

D. Bates & Co. *v.* Dale.

Clauson, J. 6th July, 1937.

Contract—Illegality—Restraint of Trade—Small Accountancy Business—Sale—Agreement by Vendor—Not to be Concerned in Similar Business Within Fifteen Mile Radius—Whether Enforceable.

In 1927, the defendant, being about twenty-five years old, but not having the usual professional qualifications, had an accountancy business with about sixty clients at Leek, in Staffordshire, a town of about 18,000 inhabitants. This consisted mainly of looking after the profit and loss account of small tradesmen for income tax purposes. In December, 1927, he entered into two agreements with the plaintiffs, who owned one of the largest accountancy businesses in the Potteries, a thickly populated industrial area comprising several towns and villages lying south-west of Leek. By the first agreement he undertook to sell his business comprising his goodwill and office furniture to the plaintiffs for £110. He covenanted that for fifteen years he would not be concerned or interested in or act as servant to any person concerned or interested in an accountancy business within fifteen miles of the town hall at Leek. He also agreed that he would at all times if and when required by the plaintiffs recommend their firm to the customers of his business and do all in his power to extend and retain it for their benefit. By the second agreement the plaintiffs agreed to employ the defendant as manager of their Leek branch, which was constituted by the business they were purchasing from him, at a salary of £5 a week with a bonus of 20 per cent. on profits. They also agreed to instruct him in the business of an accountant and auditor. There were provisions as to the termination of the employment. In 1934 the clients of the branch numbered over a hundred. A few were in outlying places a little way out of Leek and some were from Newcastle-under-Lyme, about ten miles south-west, where the defendant lived. In 1934 his employment was terminated and shortly afterwards he commenced another business in Leek similar to his original one, several of his former clients employing him. The plaintiffs now sought to restrain him from so carrying on business alleging a breach of his covenant.

Clauson, J., in giving judgment, said that the radius of fifteen miles comprised not only the Potteries area which was the centre of the plaintiffs' main business but also Buxton and Macclesfield about ten miles to the north. From the contours on the map it was clear that these places were not likely to have much connection with Leek for the purposes of a business like the present. If the covenant afforded no more than adequate protection to the party in whose favour it was imposed it might be enforceable, but if it afforded more than adequate protection it was unenforceable.

Having regard to the nature of the business of the branch and of the business of the plaintiffs it was not necessary for their protection as purchasers of this small goodwill that the defendant should be precluded from acting as an accountant in Buxton and Macclesfield. Such protection would be more than reasonably adequate and the covenant was unenforceable. Further, the fact that certain clients, when the defendant was about to leave the plaintiffs' employment, asked him to hand over their papers to them and subsequently employed him when he started business again, was not a breach of his covenant to extend and retain the practice for the benefit of the plaintiffs. If there had been a breach it would have been too nebulous to deal with.

COUNSEL: *J. L. Stone; Christie*, K.C., and *F. Errington*.

SOLICITORS: *Preston, Lane-Claypon & O'Kelly*, for *Hollinshead & Moody*, of Tunstall; *Gibson & Weldon*, for *Bowcock & Pursaill*, of Leek.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Terrene Ltd. *v.* Nelson.

Farwell, J. 15th July, 1937.

CONTRACT—SALE OF LAND—BREACH OF WARRANTY—CLAIM FOR DAMAGES—DISTINCTION FROM INNOCENT MISREPRESENTATION.

Late in 1934 the defendant wished to sell his estate of 2,000 acres, including a residence, a farm, some cottages, and an inn, besides a considerable stretch of river fishing providing salmon and trout. His solicitor being instructed to seek a purchaser without calling attention to the identity of the property or its owner, got into touch, through a firm of estate agents, with one *L*, whose occupation was dealing in real property and who, to facilitate his operations, formed the plaintiff company in October, 1934. This was a small private company with a share capital of £100, *L* becoming managing director and two solicitors being the other directors. In December, 1935, *L* was given particulars of the property. These included a statement that the house and neighbouring village were lighted by electricity from the owner's plant and that the estimated yearly income from electric light supply was £280. In January, 1935, *L*, with a manager employed by the estate agents, spent two days going over the property accompanied by the defendant's bailiff, and subsequently, in the same month, the solicitor passed on to *L* the information received from the defendant that he had been offered £250 a year for the inn, the rent of which was £193 a year, but had not accepted because he was not prepared to disturb the sitting tenant. *L* was also informed that the estimated income from electric light supplied was £280 a year. (This figure was arrived at by calculating 4½d. a unit on an estimation of 15,000 units, which, however, could not be accurately ascertained because, though a turbine operated by the river had a meter, a smaller plant operated from a reservoir had none. Further, the rates of payment were irregular, the inn paying a flat rate of £25 a year and other consumers paying at various rates up to 9d. a unit). *L* was further told that certain income accrued from supplying water to villagers and that the outgoings with regard to water were £49 a year besides £11 tithe rent charge and a small sum charged by the river conservators. By an innocent mistake he was not told that the water supplied by the defendant to the village came from the local authority who made a charge for it, and the solicitor in good faith and not knowing of these charges omitted them in filling in a form asking for particulars of "all tithe, tithe rent-charge, tithe annuity or land tax and all other outgoings other than the usual rates and taxes." In March, 1935, the company entered into a contract to purchase the property for £71,000, but it was in fact conveyed in July, 1935, to one *F*, to whom the company agreed to sell it at a considerable profit. This purchaser then discovered (1) the liability to pay for the water; (2) that the electric light plant was not capable of producing the number of units estimated; (3) that the offer of £250 a year for the inn had not been made in the immediate past, but some years previously. He accordingly suggested that he had been misled by the plaintiff company and made a claim against them. They, in turn, brought an action against the defendant for breach of warranty.

FARWELL, J., in giving judgment, said that this was not a claim for compensation under a contract and there was no suggestion of fraud. A warranty might be defined as a stipulation subsidiary to or collateral with a principal contract, a breach of which gave rise to a claim for damages but did not affect the principal contract. For a warranty there must be a clear intention on the part of both parties that there should be such a collateral stipulation. The court would not allow a person to get damages for innocent misrepresentation under the guise of a breach of warranty (*Heilbut, Symons & Co.* v. *Buckleton* [1913] A.C., at p. 49). In the sale of realty it was always difficult to prove a warranty in the absence of special circumstances. Ordinarily a purchaser had to seek his information from the vendor, but he was bound to make proper inquiries himself. When a purchaser sought information the vendor was bound to the best of his ability to supply it accurately. If he made a misrepresentation knowingly or recklessly the purchaser had a remedy in damages for fraudulent misrepresentation, and in certain circumstances was entitled to be relieved of the contract if it was induced by that representation. But innocent misrepresentation did not give rise to a claim for damages except in certain very special cases (*Nocton* v. *Ashburton* [1914] A.C. 932). A vendor giving information to a purchaser was not guaranteeing or warranting its correctness apart from some special arrangement or intention as in *De Lassalle* v. *Guildford* [1901] 2 K.B. 215. Thus, if a vendor representing the drains of a house to be in good order, tacitly or in words expressed that he was willing that the purchaser should dispense with examination on his own account because of that statement, the court would find that there was a definite intention on the part of both parties that the information so given should not be treated simply as a representation. The evidence in the present case fell far short of establishing a special stipulation of that kind. In the case of the offer for the inn there was no warranty. In the case of the electric light the figure given was known to be an estimate and *L* could have examined the plant himself. The fact that he did not do so was not due to anything the defendant said or did. The estimate was not a warranty. As to the water charges, though accurate information was not given, the representation did not amount to a warranty, The action would be dismissed with costs.

COUNSEL: *Cohen*, K.C., and *George Slade; Harman*, K.C., and *Wilfrid Hunt*.

SOLICITORS: *Marshall & Hicks Beach; Turner & Co.*, for *W. B. D. Shackleton*, of Bradford.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Egham-Staines Electricity Co. Ltd. *v.* Gas Light and Coke Co.

Farwell, J. 19th July, 1937.

CONTRACT—HIRE OF ELECTRIC COOKERS—AGREEMENT—NO ALTERATION OR ADDITION TO BE MADE TO THEM—GAS HOTPLATES DESIGNED TO STAND ON COOKERS—WHETHER ALTERATION OR ADDITION.

The plaintiff company hired electric cookers to consumers of electricity within their area. Under the agreements no alteration or addition was to be made to any cooker without the previous written consent of the plaintiffs. Certain persons wished to have gas as well as electric cooking apparatus, and the defendant company put on the market a hotplate burning gas so made that it fitted conveniently on top of an electric cooker. Many consumers of electricity had them

fitted. The plaintiffs now sought an injunction to restrain the defendants from procuring or inciting any persons who had entered into agreements with them for the hire of electric cookers to permit the affixing to those cookers of gas hotplates. An injunction was also sought to restrain the defendants from affixing gas hotplates to electric cookers hired by the plaintiffs to their consumers.

FARWELL, J., in giving judgment, said that it could not be suggested that the hotplate which merely stood on the electric cooker or, indeed, on anything else, was such an addition or alteration to the plaintiffs' apparatus as was contemplated by the agreement. There was no breach of contract by any of the plaintiffs' customers. The action would be dismissed.

COUNSEL: *Sir Walter Monckton*, K.C., and *A. Tylor*; *Miller*, K.C., and *Hubert Hull*.

SOLICITORS: *Sydney Morse & Co.*; *Parker, Garrett & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Spence's Estate: Barclays Bank Ltd. *v.* Stockton-on-Tees Corporation

Luxmoore, J. 19th July, 1937.

CHARITY—BEQUEST OF RESIDUARY ESTATE—TRUST TO PURCHASE LAND AND ERECT PUBLIC HALL—TO BE PRESENTED TO LOCAL AUTHORITY FOR SUCH PURPOSES AS THEY CONSIDER DESIRABLE—WHETHER CHARITABLE GIFT.

By his will made in 1922 the testator bequeathed his residuary estate in trust to apply it "in the purchase of land at Stockton-on-Tees and in or towards the erection on such site of a public hall which site and hall when completed shall be presented by the trustees to the Corporation of Stockton-on-Tees in memory of my deceased father and mother and to be used by the said Corporation for such public purposes as it may from time to time consider desirable." The question arose whether this was a valid trust, either as a charitable gift or otherwise, or whether it was wholly or partially invalid.

LUXMOORE, J., in giving judgment, said that a gift for the benefit of the inhabitants of a particular locality was a good charitable gift: *Goodman* v. *Saltash Corporation*, 7 App. Cas. 633; *Inland Revenue Commissioners* v. *Pemsel* [1891] A.C. 531. It was impossible to classify the many cases dealing with this class of gift, or to deduce a fixed principle from them. The mere fact that the object might be beneficial to the community did not make a gift charitable. Here the site was to become the property of the corporation, and accordingly was to be held like its other property for the benefit of the borough. If there were nothing else in the will that would be a valid charitable gift; but it had been argued that the gift was rendered invalid because the hall was to be a public hall to be used for such public purposes as the corporation might from time to time consider desirable. However, the reference to "public purposes" in the will was limited to public purposes for the benefit of the inhabitants of the borough and was inserted to exclude any possibility that the hall might be used for private purposes. The fact that it was to be conveyed to the corporation was important in considering the validity of the gift. The corporation could not use it for the purposes of its members in their private capacity. His lordship referred to *In re Holburne*, 53 L.T. at p. 212, and *Houston* v. *Burns* [1918] A.C. 337, and said that here the testator's object was clearly defined. This was a valid charitable gift.

COUNSEL: *F. Fuller*; *Winterbotham*; *Andrewes Uthwatt* and *Brunyate*; *G. Upjohn*.

SOLICITORS: *Gibson & Weldon*, for *Archer, Parkin & Townsend*, of Stockton-on-Tees; *Grey & Co.*, of Weston-super-Mare; *Treasury Solicitor*; *Bell, Brodrick & Gray*, for *Town Clerk, Stockton-on-Tees*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Ross & Others *v.* Electrical Trades Union.

Farwell, J. 28th July, 1937.

TRADES UNION—EXPULSION OF MEMBERS—MEETING TO CONSIDER CHARGES—MEMBERS EXPELLED NOT PRESENT THROUGHOUT HEARING—WHETHER ENTITLED TO BE PRESENT.

The plaintiffs, being members of the defendant union, were concerned in an unofficial strike. On the 2nd February, 1937, they were notified by the executive council that the council would meet on the 7th February and they were invited to attend as charges arising out of the strike would be brought against them under r. 6, cl. 44 (9) of the union's rules. They attended accordingly on that day, the case against them being stated and their answer given. On the decision of the council they were expelled from the union. In this action they sought to restrain the council from acting on this decision and asked for a declaration that it was *ultra vires* and void. They contended that the proceedings had been contrary to natural justice in that a meeting to consider the strike and the dispute out of which it arose had been held on the 6th February and that they had not been present thereat. They also complained that an adjourned meeting from which they were likewise excluded had been held on the 8th February, and that further evidence had then been heard. The defendant union contended that the object of the earlier meeting was to put the members of the council in possession of the matters to be dealt with and its scope was wider than the position of the plaintiffs and the strike. They also contended that nothing was said at the subsequent meeting which could have influenced the council against the plaintiffs.

FARWELL, J., in giving judgment, said that there was no doubt that at the meeting on the 6th February the unofficial strike had been discussed. The plaintiffs were honestly of opinion that the strike should have been recognised by the council but the council were honestly of opinion that it could not be recognised and it was the duty of the members to follow that decision. The court's jurisdiction to interfere with the decision of a domestic tribunal like the executive council was very limited (*Maclean* v. *Workers' Union* [1929] 1 Ch. 602). In the absence of evidence of *mala fides* and if such a tribunal had acted fairly, complying with the rules governing it, the court could not interfere whatever its view of the justice of the decision. Here there was no suggestion of *mala fides*. The union's rules by r. 45 required that a member "charged with the offences mentioned shall be summoned to attend at the meeting which is to hear and determine his case." To say that he was entitled to be present from beginning to end was an impossible construction. The council were entitled to discuss among themselves the conclusion to be arrived at and the penalty to be imposed in the absence of the person charged. As to the meeting after the withdrawal of the plaintiffs, his lordship held that such evidence, if it were evidence as was then heard, was rather in their favour than against them. The action must be dismissed with costs.

COUNSEL: *Rewcastle*, K.C., *J. R. O. Jones*, and *P. Oppenheimer*; *Grant*, K.C., and *R. Jennings*.

SOLICITORS: *Cliftons*; *Rowley, Ashworth & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re C———, an Infant.

LUXMOORE, J. 28th July, 1937.

INFANT—ADOPTION—ILLEGITIMATE CHILD OF WIFE—NO BLOOD RELATION OF HUSBAND—LESS THAN TWENTY-ONE YEARS YOUNGER THAN EITHER—APPLICATION BY BOTH TO ADOPT CHILD—ADOPTION OF CHILDREN ACT, 1926 (16 & 17 Geo. 5, c. 29), ss. 1, 2 (1).

A husband and wife sought to adopt a girl nineteen years' old, each being less than twenty-one years older than she.

She was the illegitimate daughter of the wife but no blood relation of the husband.

LUXMOORE, J., referred to the Adoption of Children Act, 1926, ss. 1 and 2 (whereby no adoption order could be made if the applicant was less than twenty-one years older than the infant, provided that if they were both "within the prohibited degrees of consanguinity" the court might make an order). The question was whether the words meant "the prohibited degrees of marriage" or those degrees of blood relationship which were to be ascertained by reference to the tables of consanguinity. No mention was made of the prohibited degrees of affinity and there was no special reference to sex. The prohibited degrees of marriage included the prohibited degrees of consanguinity as well as affinity (see Succession Act, 1533, s. 4). Consanguinity was defined in the Imperial Dictionary of the English Language as: "The relation or connection of persons descended from the same stock or common ancestor in distinction from affinity or relation by marriage." By the tables of consanguinity and affinity the prohibited degrees of consanguinity included all lineals in the direct line ascendant or descendant, however far asunder in degree, and all collaterals to the third degree inclusive. There was no reason for reading the proviso as if it included prohibited degrees of affinity or for introducing any question of sex. The prohibited degrees of consanguinity were settled by reference to the degrees of blood relationship and provided the infant were within those degrees the court could authorise the adoption. The policy of the Act was to relax the restrictions in cases of close family relationship, and there was no reason for importing any limitation as to sex in the reference to the degrees of consanguinity because of the word "prohibited." The phrase defined the degrees of blood relationship between adopter and infant which must exist to enable the court to relax the prohibition in the section and was not limited to cases where the parties were of opposite sex. The female applicant was within the degrees of consanguinity and the male applicant was not, though he was within a similar degree of affinity. The court's power to make an order was limited to the female applicant. The male applicant had consented to the adoption by her (see s. 4 (2)) and the court would authorise it.

COUNSEL: *E. Holland; Andrewes Uthwatt.*

SOLICITORS: *Official Solicitor; Treasury Solicitor.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Duce and Boots Cash Chemists (Southern) Limited's Contract.

Bennett, J.

22nd, 23rd and 24th June, and 28th July, 1937.

VENDOR AND PURCHASER—SALE OF LAND—ABSTRACT OF TITLE—VESTING ASSENT—"SUFFICIENT EVIDENCE"—MEANING—ADMINISTRATION OF ESTATES ACT, 1925 (15 Geo. 5, c. 23), s. 36 (7)).

The abstract of title delivered by the vendor of the fee simple of No. 8, Chain Street, Reading, disclosed the following documents: (1) The will of G.H., appointing his son G.E.H. sole executor, and bequeathing the property to him on trust to permit his daughter S.H. to use and occupy it free of rent, rates and other outgoings during her life or spinsterhood should she wish to do so, and to pay her £1 10s. a week during her life or spinsterhood, and subject and charged as aforesaid for himself absolutely; (2) Probate of the will granted to G.E.H. on the 3rd December, 1931, on which was endorsed a memorandum of an assent dated the 21st April, 1932; (3) An assent dated the 21st April, 1932, which recited the will, the probate and the payment of debts, legacies and funeral and testamentary expenses, and continued: "the executor hereby consents to all the property passing under the said will vesting in himself . . . for all the estate vested in the testator," his estate in the property being described as fee simple; (4) A deed of release dated 5th April, 1933, between S.H. (described as being of No. 8 Chain Street, Reading, spinster), and G.E.H., which recited the will, the bequest of the premises to G.E.H., the weekly sum charged thereon, and the probate, and continued that S.H. as beneficial owner discharged the premises from all claims "in respect of the annuity of £1 10s. per week payable during her life or spinsterhood"; (5) A conveyance dated the 26th October, 1935, by G.E.H. to the present vendor. By their requisitions the purchasers' solicitors now objected that S.H. was a person having the powers of a tenant for life, and should have concurred in the conveyance by G.E.H., who had no power to vest the property in himself as beneficial owner. The vendor took out a vendor and purchaser summons under the Law of Property Act, 1925, ss. 49 and 203 (5), claiming that he had shown a good title.

BENNETT, J., in giving judgment, said that investigation of the title had shown the purchasers (1) that under the will the premises became settled land (Settled Land Act, 1925, ss. 1 and 2); (2) that S.H. had the powers of a tenant for life; (3) that she had never surrendered her right to occupy the premises; (4) that after the date of the assent she was a spinster living at the premises. Therefore, it was known that at the date of the assent G.E.H. was not a "person entitled to have the legal estate conveyed to him." But the vendor had contended that under the Administration of Estates Act, 1925, s. 36 (7) (which provided that an assent by a personal representative should be "sufficient evidence that the person in whose favour the assent . . . is given . . . is the person entitled to have the legal estate conveyed to him") "sufficient" meant "conclusive." In the case of some statutes it had been held that "sufficient evidence" meant "conclusive evidence" (*Ystalyfera Iron Co.* v. *Neath and Brecon Railway Co.*, 17 Eq. 142; *Lewis* v. *Leonard*, 5 Ex.D. 165). In the case of others it had been held that it did not (*R.* v. *Fordham*, L.R. 8 Q.B. 501; *Garbutt* v. *Durham Joint Committee* [1906] A.C. 291). There must be a compelling context before "sufficient" could be held to mean conclusive, and there was no such context here. The effect of the sub-section was that a purchaser might safely accept a vesting assent as evidence that the person in whose favour it had been made was the person entitled to have the legal estate conveyed to him unless and until upon a proper investigation of the title facts came to his knowledge indicating the contrary. Then it could not be accepted as sufficient evidence of something which the purchaser had reason to believe was contrary to the facts. The summons should be dismissed with costs.

COUNSEL: *G. Upjohn; Edgerley.*

SOLICITORS: *Mills & Morley*, for *E. Harold Duce*, of Shoreham; *Seaton Taylor & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Milk Marketing Board *v.* C. Warman and Sons.

Charles, J. 28th June, 1937.

AGRICULTURAL MARKETING—MILK—PRODUCER INJURED BY UNDERCUTTING—REFUSAL TO PAY LEVIES—DUTIES OF MILK MARKETING BOARD—AGRICULTURAL MARKETING ACT, 1931 (21 & 22 Geo. 5, c. 42)—MILK MARKETING SCHEME (APPROVAL) ORDER, S.R. & O. 1933, No. 789.

Action tried by Charles, J.

The plaintiffs, the Milk Marketing Board, claimed £182 as a payment of levies alleged to be due under para. 65 (1) of the Milk Marketing Scheme, 1933, from the defendants, a firm of milk producer retailers in Stepney, to whom a licence under the scheme had duly been granted. The defendants contended that they were not subject to the scheme, and, if they were, that they were not liable under it for the levy claimed, as they had voted in favour of the scheme on the strength of the board's representation that they would use all their

powers under the scheme to render undercutting in the retail trade impossible. The defendants alleged that, contrary to their representation and in breach of the warranty, the board had failed to take any or sufficient steps to prevent undercutting by their competitors, and that the defendants were consequently not liable to pay the levy claimed. They counter-claimed £208 9s. 3d. on the ground that they had, during the period for which the scheme had been in force, received that amount less than they would have received had they been able to sell milk at the price set forth in their licence. The alleged representations were said to have been contained in a pamphlet issued by the board called "The Milk Marketing Scheme explained" and in a letter written by the board, both of which documents contained a statement to the effect that the scheme would make undercutting impossible.

CHARLES, J., said that in his opinion the pamphlet in question was purely explanatory. He could find no single misrepresentation of fact in it. The letter complained of merely copied out some words from the pamphlet. The defence therefore failed. As to the counter-claim, the issue had been whittled down to the question whether the board had been guilty of a breach of duty. It was said that the board had failed particularly in their duty to enforce para. 12 of the scheme against undercutting in the prescribed contracts with wholesalers, and that, if they had done so and stopped the supplies, the evil would have disappeared. It was not seriously suggested that the board had acted partially. The scheme nowhere prescribed a statutory duty to stop undercutting. He (his lordship) found they had made vigorous and successful efforts to stop undercutting. As to the defendants' claim that the board had failed in their duty by not enforcing the clause against undercutting in the prescribed contracts, a mere reading of the clause was enough to establish that it was non-obligatory and purely permissive. The board had to regard the scheme as a whole. It would be impossible to find in favour of a contention that they had failed in their duty because they had not used a particular weapon which was only put into their hands to use if they thought it desirable in the interests of all those within the scheme. It would in fact be inconsistent with their duty to take any step which was inimical to the scheme as a whole. The board's failure to stop undercutting was not a breach of duty on which the defendants could rely by way of counter-claim. There would be judgment for the plaintiffs for £182 10s. 6d., with costs, and judgment in their favour on the counter-claim, with costs.

COUNSEL: *R. P. Croom-Johnson*, K.C., and *B. MacKenna*, for the Milk Marketing Board; *Gilbert Paull* and *W. S. Chaney*, for the defendants.

SOLICITORS: *Ellis & Fairbairn; H. Rogers-Lewis.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division

Pakenham *v.* Pakenham, Turner intervening.

Langton, J. 2nd July, 1937.

DIVORCE—DUTIES OF KING'S PROCTOR—WIFE'S PETITION—IDENTITY OF WOMAN NAMED—INTERVENTION BY WOMAN SERVED—WOMAN INTERVIEWED WITHOUT APPROACHING HER SOLICITOR FIRST.

This was a wife's petition for dissolution on the ground of the husband's adultery with a woman named, the name of the woman having been given by the husband. A woman was served having the same surname but with one different Christian name. The woman served intervened denying the charges. At the hearing in February last the court ordered an adjournment, requesting the assistance of the King's Proctor in establishing the identity of the woman with whom adultery was charged.

At the resumed hearing the Solicitor-General, Sir Terence O'Connor, K.C., appearing on behalf of the King's Proctor, after stating the result of the King's Proctor's inquiries, asked for the direction of the court in respect of certain complaints, made by the solicitor for the intervener, that the agents of the King's Proctor had acted improperly in interviewing the intervener in the absence of her solicitor. The King's Proctor took the view that these complaints were not justifiable. It was desired that it should be made clear that the King's Proctor was entitled to more co-operation than he had received from the solicitor for the intervener. Every assistance had been given by the other solicitors concerned. At the request of the court the solicitor for the intervener made a statement explaining his attitude.

LANGTON, J., in giving judgment, said that in view of the fact that he was not able to be satisfied as to the adultery of the woman named, there would be a decree on a finding of adultery with a woman unknown. Mr. Lewis, the solicitor for the woman named in the case, had taken action in the matter, which he had been frank enough to come here and explain in full. He started under one grave misunderstanding. That grave misunderstanding was that he imagined that the King's Proctor, when requested by the court to investigate a matter concerning a divorce case, had no other and greater duty than and no position separate from that of an ordinary solicitor engaged in a case. That was a wholly wrong conception of the King's Proctor's duties and office. The King's Proctor, when asked by the court to investigate a certain matter, had a duty quite different from and other than the duty of a solicitor engaged in a case. The King's Proctor saw fit, in the present case, in discharge of his duty, to instruct an agent in Manchester to approach the woman named direct. Mr. Lewis, when he heard of this, took umbrage at once, and, although he (his Lordship) was satisfied that Mr. Lewis was completely wrong in taking umbrage at all, he had a certain sympathy with him in that a solicitor who is keenly concerned with, and keenly insistent on, his client's interests might well wish and hope that he should have the first and every opportunity of advising and assisting that client in the litigation which was entrusted to his charge. He saw there, in Mr. Lewis's feelings upon that matter, something that was certainly commendable, even if it happens to be ill-judged. But, having started with this complete misapprehension of the King's Proctor's position, and then having taken umbrage at an action which was quite justified on the part of the King's Proctor, Mr. Lewis embarked upon some letters and actions which could be qualified only as unjustified, very hasty, and ill-judged. He was perfectly satisfied, having heard Mr. Lewis, that those actions were embarked upon from excess of zeal, and not from any real desire on his part to obstruct or impede the course of justice. The King's Proctor, who was placed in an exceedingly difficult position, had not acted in any way or to any degree improperly. He (his Lordship) had considered whether, in the circumstances, where there was a solicitor on the record, the King's Proctor ought or ought not to have approached the solicitor in the first instance. Having heard the Solicitor-General, and having reflected upon the matter, he thought it would be quite impossible and quite wrong to endeavour to fetter the action of the King's Proctor in such a way. It is very easy to understand that there might be cases in which the King's Proctor would seek at once the assistance of a solicitor in the case, the most reliable source which he could possibly approach. On the other hand, there might be cases in which he would feel not only that it would be the wrong way to approach the matter, but also that it might greatly embarrass the solicitor himself. Therefore, he was quite satisfied that it would be very unwise to lay down any such principle at all.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *John Foster*, for the King's Proctor; *Allister Hamilton*, for the petitioner; *R. T. Barnard*, for the respondent; and *W. Russell Lawrence*, for the intervener.

SOLICITORS: *King's Proctor; Kinch & Richardson*, Agents for *Percy Hughes & Roberts*, Birkenhead, for the petitioner; *Layton & Co.*, for the respondent; *Lewis & Co.*, for the intervener.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.

Balchin *v* Balchin.

Sir Boyd Merriman, P., and Langton, J. 16th July, 1937.

HUSBAND AND WIFE—WILFUL NEGLECT TO MAINTAIN—WIFE ABSENTING HERSELF FROM HOME—*Bonâ fide* OFFER OF HOME BY HUSBAND—FIRST SUMMONS DISMISSED—FRESH SUMMONS AFTER LAPSE OF ONE YEAR—NO STEP TAKEN BY WIFE IN INTERVAL—HUSBAND'S RENEWED OFFER HELD NOT *bonâ fide*—ORDER IN FAVOUR OF WIFE UPHELD.

This was an appeal by the husband from an order of the Maidenhead justices directing him to pay maintenance to the wife at the rate of 15s. per week on the ground of wilful neglect to maintain. The facts appear sufficiently from the judgments.

SIR BOYD MERRIMAN, P., said that in May, 1936, the wife, who at the time was living separate from the husband, applied to the Burnham justices for maintenance on the grounds of desertion and wilful neglect to maintain. That summons was dismissed on the following ground: after an adjournment to enable the parties to consider their position, the justices found that the husband was then making a genuine offer to take his wife back and provide her with a home and that she was unreasonably refusing to accept that offer. In May, 1937, another bench of justices, who were fully apprised of the circumstances relating to the former application, made the order appealed against. Counsel for the appellant having stated that the real point he wished to argue was one of *res judicata*, it struck both members of the court that such an argument must be impossible in the circumstances, because the questions whether the wife was wilfully absenting herself from home, whether the husband was making a genuine offer to take her back, whether she was unreasonably refusing it in May, 1937, could not in the nature of things have been finally decided for all time in May, 1936. It emerged that the real point was this: that a court of competent jurisdiction having decided that the wife was wilfully absenting herself in 1936, it was plainly for her to show that some new circumstance had arisen to justify her in bringing her case in 1937. With reluctance the court had allowed counsel on behalf of the appellant to supplement the justices' note with an affidavit, which stated categorically that the wife admitted that between May, 1936, and the date of the summons in the present case, she had done nothing which changed the state of things which was found to have existed in 1936. If the court were discussing a preliminary point whether, the fact being admitted and there being nothing else before the justices, the summons was on the date when it was taken out misconceived, there would be a great deal to be said for that point. The situation would be *mutatis mutandis* that which was described in *Ellis* v. *Ellis* (1929), 93 J.P. 175. But what happened was that the case was fully contested by the parties, who gave their evidence. The husband made in the face of the Maidenhead court an offer to take his wife back while at the same time refusing to take her children. An offer made in 1937 must be a different thing from an offer made in 1936, if for no other reason than that the man had in the meanwhile for twelve months been living apart from his wife, which was quite plainly a thing that required to be judged afresh. The matter had to be judged not at the date of the issue of the summons, but on the material which was submitted to the justices, and they had found on the evidence that at the date of the hearing, if not at the date of the complaint, the state of things was not that the husband had made a genuine offer, which the wife had unreasonably refused, but that the husband had made a colourable offer which had no substance of reality behind it, which the wife was not obliged to entertain. In other words they had found circumstances which (in his Lordship's opinion) justified them in saying that she had brought to an end the state of wilfully abstaining from co-habitation desired by the husband, which state of wilful abstention had down to that time suspended the right to maintenance. The appeal should therefore be dismissed.

LANGTON, J., in delivering a concurring judgment, said that the wife had come before the Maidenhead justices with an exceedingly heavy handicap because she had not approached her husband in any way in the interval since 1936. In spite of that handicap the justices at Maidenhead had come to a very definite conclusion in her favour, viz.: "The husband made an offer to his wife to provide a home for her but not for her children. The justices were of opinion that the offer was not a *bonâ fide* one. That they believed the evidence of the wife and not that of the husband." Upon these findings, which constituted a completely fresh set of facts, the justices were, in his (his Lordship's) opinion, entitled and indeed right to come to the conclusion which they did. He agreed that the appeal should be dismissed.

COUNSEL: *Victor Williams*, for the appellant husband; *A. A. Gordon Clark*, for the respondent wife.

SOLICITORS: *Jackson and Jackson*, for *Winter-Taylor and Woodward*, High Wycombe; *Edridge, Son & Marten*.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

[For Table of Cases previously reported in current volume see page iii of Advertisements.]

Obituary.

MR. J. FAWCETT.

Mr. Joseph Fawcett, solicitor, of Morecambe, died on Friday, 30th July, at the age of seventy-nine. Mr. Fawcett, who was admitted a solicitor in 1885, was formerly a member of the Morecambe Urban District Council. He was one of the founders and a past captain of the Morecambe Golf Club.

MR. J. H. PAYNE.

Mr. John Herbert Payne, solicitor, founder of the firm of Messrs. Payne & Payne, of Hull, died at Cottingham, Yorks, on Monday, 2nd August, at the age of sixty-two. Mr. Payne was admitted a solicitor in 1898. He was a past president of the Hull Incorporated Law Society, and Vice-Chairman of the Legal Studies Advisory Committee at Hull University College.

Parliamentary News.

Progress of Bills.

House of Lords.

The following Bills received the Royal Assent on the 30th July:—

Aberdeen Corporation (Water Gas Electricity and Transport) Order Confirmation.
Aberystwyth Rural District Council.
Agriculture.
Appropriation.
Bath Corporation.
Bristol Transport.
Canvey Island Urban District Council.
Cardiff Extension.
Cinematograph Films (Animals).
Clyde Valley Electrical Power Order Confirmation.
Coal Mines (Employment of Boys).
Coal (Registration of Ownership).
Dartford Tunnel.
Elgin and Lossiemouth Harbour Order Confirmation.
Export Guarantees.
Factories.
Ferguson Bequest Fund Order Confirmation.

Finance.
Isle of Man (Customs).
Liverpool United Hospital.
Local Government Superannuation.
Local Government Superannuation (Scotland).
London Naval Treaty.
Matrimonial Causes.
Milk Amendment.
Ministry of Health Provisional Order (Birmingham, Tame and Rea Main Sewerage District).
Ministry of Health Provisional Order (Clevedon Water).
Ministry of Health Provisional Order Confirmation (Bridlington)
Ministry of Health Provisional Order Confirmation (Guildford).
Ministry of Health Provisional Order Confirmation (Morecambe and Heysham).
Ministry of Health Provisional Order Confirmation (Rhymney Valley Sewerage District and Western Valleys (Monmouthshire) Sewerage District).
Ministry of Health Provisional Order Confirmation (Selby).
Ministry of Health Provisional Order Confirmation (South East Essex Joint Hospital District).
Ministry of Health Provisional Order Confirmation (Tynemouth).
Ministry of Health Provisional Order (Wisbech Water).
Ministry of Health Provisional Order (Yeadon Water).
Nigeria (Remission of Payments).
North Cotswold Rural District Council.
Paisley Corporation Order Confirmation.
Poole Corporation.
Rating and Valuation.
Royal Samaritan Hospital for Women Glasgow Order Confirmation.
Saint Paul's and Saint James' Churches (Sheffield).
Shoreham Harbour.
Southampton Corporation.
Staffordshire Potteries Water Board.
Summary Procedure (Domestic Proceedings).
Taunton Corporation.
Watford Corporation.

Questions to Ministers.

LITIGANTS (*IN FORMA PAUPERIS*).

Mr. DOBBIE asked the Attorney-General whether he is aware that the successful appellant in a recent case decided in the House of Lords was described as a pauper; and whether, in view of the stigma attaching to this word, he will consult with the Lord Chancellor with a view to taking steps to put an end to the practice of describing litigants in certain circumstances as paupers and substituting some such phrase as appellant by special leave?

The ATTORNEY-GENERAL: The hon. Gentleman does not state to what case he refers and in what context the description appeared. There are provisions for an appeal to the House of Lords *in forma pauperis*, and this phrase is used in the Statute 56 and 57 Vict., ch. 22. In these circumstances the word may well have been used not as attaching any stigma to the appellant but in reference to the procedure under which he was making his appeal which confers certain privileges on the appellant with regard to costs. The suggestion that "by special leave" should be substituted for the term might cause confusion by reason of the fact that under the Administration of Justice (Appeals) Act, 1934, leave is in some cases granted by the Court of Appeal and in others by the House of Lords. [29th July.

SUPREME COURT (SHORTHAND WRITERS).

Sir W. DAVISON asked the Attorney-General whether, in connection with the Government's decision to supply shorthand writers to judges in October next for the taking down and transcribing the notes of evidence, consideration will also be given to the fact that under the Indictable Offences Act of 1848 evidence or depositions in cases sent from the lower courts for trial at assizes or quarter sessions have to be in longhand; and whether such steps as may be necessary will be taken to allow of the appointment by courts of summary jurisdiction of official shorthand writers to transcribe such evidence or depositions, including the notes in matrimonial and other cases when notes of evidence are required to be taken for use in case of appeal?

The ATTORNEY-GENERAL: This question was, as my hon. Friend no doubt appreciates, outside the terms of reference of the Royal Commission whose recommendations led to the decision referred to in the first part of the question. I am passing my hon. Friend's suggestion on to the Secretary of State for Home Affairs for his consideration. [29th July.

The Law Society.

FINAL EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Final Examination held on the 21st and 22nd June, 1937:—

Leslie Herbert Ronald Abbott, Abraham Daniel Abrahamson, LL.M. Liverpool, Robert Leslie Adam, LL.B. Liverpool, Frank George Adamson, Richard Pextell Colville Agnew, B.A. Cantab., Walter Alker, Harold Joffre Amiel, LL.B. London, Felix Colin Anderson, Fred Roper Appleby, B.A. Oxon, Montague Eric Appleby, Noel Joseph Apthorpe-Webb, B.A., LL.B. Cantab., Walter Alan Armstrong, George Francis Ashford, B.A. Cantab., LL.B. Birmingham, Anthony Ralph Attenborough, B.A. Oxon, Ernest Bailey, John Bailey, Arthur John Borradaile Baily, Norman Kerr Bain, B.A. Cantab., John Neame Baines, B.A. Oxon, Seymour Linsday Baker, B.A. Cantab., Reginald Basil Baldwin, B.A. Oxon, Stephen Charles Barker, Frank Barnes, James Arthur Barnett, William Herbert Barnett, B.A. Cantab., Edwin Fred Barrett, John Henry Bartram, B.A., LL.B. Cantab., Gordon Edward Bateman, LL.B. London, Joseph Harold Bates, Thomas John Francis Bayfield, Cyril Beach, Kenneth Beaumont, B.A., LL.B. Cantab., Samuel Leslie Beaumont, LL.B. Birmingham, Barnet Isidore Beckman, B.A. Oxon, B.A. London, Frank Bentham, LL.B. London, John MacKay Binney, Albert Raymond Blackburn, LL.B. London, Winifred Mabel Blanchard, Peter Maret Blandy, Edward Clement Blower, John Garland Boshell, John Arthur Bowden, William Edward Boyes, B.A. Cantab., Cave Bradford, Benjamin Gerald Bradley, George Farmer Brady, Vivien Anna Braune, LL.B. London, Jack Brodie, LL.M. Leeds, Geoffrey James Brough, B.A., LL.B. Cantab., John Blamire Brown, John Gordon Leonard Brown, B.A. Cantab., Kenneth Maxwell Brown, William Waudby Brown, B.A., LL.B. Cantab., Leigh Kerfoot Brownson, Richard Henry Bryant, Cyril Henry Whitehead Buckley, LL.B. Manchester, Robert Henry Buckley, LL.B. Sheffield, Geoffrey Francis Burndred, Angus Martin Burnett-Stuart, B.A. Cantab., Moss Woolfe Burns, Kenneth Francis Mackay Bush, John Riley Butterfield, B.A., LL.B. Cantab., Thomas John Cable, Guy Caldecott, Robert Mark Carpenter, Peter Frederick Carter-Ruck, Leslie George Cartwright, Bernard Dudley Cattermole, Alfred Joseph David Cazes, B.A. Oxon, Donald Hugh Chapman, Peter John Bygrave Church, Norman Arthur Citrine, Harvey Frederick Beckford Clark, Jean Mary Clarke, LL.B. Sheffield, Lionel Wilfred Cohen, Alwyne Hartley Buchanan Coleridge, George Brian Collinson, LL.B. Leeds, Andrew Stephen Charles Comber, Thomas Lawson Cook, B.A. Oxon, Charles Lynton Cox, B.A. Cantab., James Henry Lewis Cox, Leonard John Coxwell, William Fairlie Cross, B.A. Cantab., Maurice Clement Cruttwell, Donald Bowden Dan, Adrian Graham David, B.A. Cantab., John Brydon Davidson, LL.M. London, Daniel Humphreys Davies, LL.B. Wales, Herbert Gordon Davies, John Richard Francis Daw, William Alfred Dawson, Hubert Henry Day, John Maxwell Day, LL.B. Birmingham, George William Dean, B.A., LL.B. Cantab., James Herbert Alexander Paul de Cordova, Walter Leslie Denton, B.A. Cantab., Fred Dewhurst, John Graham Staveley Dick, LL.B. Manchester, George Dickinson, Alexander Clement Dodd, LL.B. London, George Callander Done, B.A., B.C.L. Oxon, James Austin Dowding, Neville William Driver, Thomas Waterworth Drury, Patrick Merle Duggan, Edmund Curtis Durham, Geoffrey Cothay Edwards, Cecil Ellison, LL.B. Manchester, Michael Francis John Emanuel, Harold Edward Entwistle, Beryl Mair Rosser Evans, Alcuin Edward Feeny, James Eric Ferris, B.A. Cantab., Brian Edward Keene Figgis, Maurice Fooks, B.A. London, Edward Herbert Frank, Denis Edward Frean, Leonard Vincent Fry, Leslie James Fryer, LL.B. Bristol, Eric Patrick Fullbrook, Mowbray Garden, Maurice Garton, LL.B. Sheffield, Reginald Edwin Gill, LL.B. London, James Haydon Wood Glen, LL.B. Durham, Raymond Henry Goddard, LL.B. London, John Scott Gofton, Cyril Joshua Goodman, Dennis Gordon, Herbert Joseph Gowing, John Hawtin Marshall Greaves, M.A. Cantab., Edward Ambler Green, Sidney Ernest Grice, Richard Lucian Grimsdell, B.A. Cantab., John Robert Haines, Edward Garner Halliwell, William Andrew Hardy, LL.B. Manchester, John Eric Hargreaves, LL.B. Manchester, Richard John Harman, Betty Harris, John Charles Scott, Harston, B.A. Oxon, Edward Fitz-Gerald Michael Hart, LL.B. Leeds, Michael Babington Charles Hawkins, Donald Wagstaffe Hay, Stanley Reginald Charles Hayes, Edward Brooke Heap, B.A., LL.B. Leeds, Joseph Helman, LL.B. London, Gerard Edmund Hemming, John Michael Herbert, B.A. Cantab., Maurice Herbst, Arnold Hertzberg, Roy Barker Hewitson, Harold Hewitt, Edwin Douglas Hitchins, B.A. Cantab., Wilfrid Neil Holdgate, Ronald George Holmes,

Frank Arnold Hooley, John Gordon Hopton, B.A. Cantab., Derek Moreton Hornby, Harker William Hornsby, B.A. Oxon, George Albert Hotter, Robert Moran Hoyle, Thomas Clifford Hughes, John Edgar Humphrey, B.A., LL.B., Cantab., Alfred Alastair Parfitt Hunt, James Edward Hunter Richard Charles Huntriss, Leslie Edwin Hutchinson, Thomas Forster Imeson, Patrick Baddeley Jakeman, Harold Sidney James, Richard Whitfield James, William Madeley James, B.A., LL.B. Cantab., Roy Jenkins, Russell Jessop, William Lewis Joberns, Grosvenor Marson Johnson, John Valentine Jolly, B.A., LL.B. Cantab., Alon Hermon Jones, Edward Martin Furnival Jones, B.A. Cantab., Gwilym Thomas Jones, M.A. Wales, James Alan Jowett, George Frederick Kennedy Ernest James Kenyon, Hugh Frederick Watt Kitchin' Kenneth Charles Kitto, Henry John Hey Lamb, B.A., LL.B., Cantab., Charles Lambert, William Edward Lambert, David Philip Lawson, B.A. Oxon, Frank Hartley Lawton, Robert Clifford Ledger, B.A. Cantab., Robert Frederick Letts, Sydney Lewis, John Morton Fothergill Lightly, B.A. Cantab., Basil Geoffrey Limbrey, Leslie David Lipson, William John Llewellin, LL.B. Wales, Cecil Evan Tenison Lloyd, Herbert Mervyn Lloyd, Lawrence Ernest Long, Brian Shiers Lowe, B.A. Cantab., Ronald Scott McAlpine, B.A. Cantab., William McCulley, Coll Lorne MacDougall, Robert Hampton Robertson McGill, B.A. Cantab., Andrew Whitworth McGowan, B.A. Cantab., Edward Willett MacGowan, Francis Joseph McHugh, LL.B. Manchester, Hector Keith McLean, William Angus McSkimming, Clive Victor MacSwinney, B.A. Cantab., Geoffrey Charles Molyneux Makin, B.A. Cantab., Edward Charles Marsden, B.A. Cantab., Denis Alfred Marshall, Donald Mathieson, Richard Sturdy May, M.A. Cantab., Harold Noel Meek, Gerald Tindal Methwold Methold, Vivian David Michael, B.A. Oxon, William Louis Middleton, Henry John Christopher Miles, B.A. Cantab., Jack Eric Miller, James Spencer Mills, LL.B. Manchester, Stuart Alan Milne, LL.M. Liverpool, Donald Robert Moffat, John Mortimer Moloney, Thomas Sebastian Montgomery, LL.B. Liverpool, Richard Scard Morgan, William Glyn Morgan, LL.B. Wales, B.A. Cantab., Harold Morris, LL.B. Liverpool, John Henry Munkman, LL.B. Leeds, Kenneth Clive Murdoch, Maurice Sidney Myers, Albert Dilnot Brian Narizzano, William James Nash, Leslie Mortimer Nathanson, Peter Edridge Newnham, B.A. Cantab., Thomas Edward Stafford Norris, M.A. Cantab., Edwin George Oldham, John Hugh Oldham, B.A. Cantab., John Hope Openshaw, LL.B. Manchester, Bryan Robins Ostler, B.A. Oxon, John Henry Mills Owens, William Geoffrey Palmer, LL.B. Birmingham, John Edward Parkes, Robert Owen Parsons, B.A. Oxon, Lindsey Andrew Partridge, Joseph Kenneth Peace, LL.B. Leeds, Daisy Peake, B.A. London, Harold Walter Pegden, George Richard Summerland Pepler, B.A. Cantab., Douglas Anthony Laurie Pile, B.A. Cantab., Eric Jack Pitt, B.A. Cantab., Alfred Laurence Polak, B.A. London, William Joseph Potts, Laurence Albert Pratt, LL.B. Liverpool, Hugh Graham Preston, B.A. Cantab., Roy Kenneth Price, Hubert Parry Rawlinson, Herbert Paul McCabe Reay, Joseph Leonard Reed, B.A. Cantab., Neville William Reed, LL.B. London, William Derick Richards, Francis James Ridsdale, B.A. Cantab., Kenneth Hugh Riggall, B.A. Cantab., William Garth Roadknight, B.A. Oxon, Donald Owen Roberts, John Richard Vaughan Roberts, B.A. Cantab., James Douglas Robertson, Leslie Jack Robinson, Leonard Walter Robson, Philip Louis Rochwerg, Albert Maurice Norval Rodgers, B.A. Cantab., Stanley Alan Rollins, William Osborne Rouston, B.A. Cantab., Bernard Morris Rudge, Philip Francis Ryan, LL.B. Manchester, Philip Hartley Samuel, LL.B. London, Richard Douglas Schuster, B.A. Oxon, Philip Ronald Scott, George Edward Carrington Seale, B.A. Oxon, William Seddon, Richard Edward Selby, B.A. Cantab., John Sephton, M.A. Liverpool, Douglas Percy Sewell, B.A. Cantab., Donald Shasha, LL.B. Manchester, Stanley Sidebotham, Alan Frank Skinner, B.A., LL.B. Cantab., Charles Alfred Brian Slack, LL.B. Sheffield, Charles Alfred Smallwood, Harold Smith, James Smith, James Alfred Smith, Laurence Arthur Smith, Harold Percival Solomon, B.A. Oxon, Thomas Stanley South, B.A. Oxon, Edward Desmond Spencer, B.A. Cantab., Moss Spiro, Joshua William Squire Sprigge, B.A., LL.B. Cantab., Eric William Spring, B.A., LL.B. Cantab., Allen Hutton Stafford, B.A. Cantab., Lewis Joseph Neale Stainton, Charles Percival Staples, Frank Nathaniel Steiner, B.A. Cantab., David Walter Aubrey Stevens, John Melior Stevens, Eric James Stiven, M.A., LL.B. Cantab., Geoffrey Nicholas Stone, Harry Welling Street, Anthony Ellis Stroud, B.A. Oxon, Leslie Joseph Stroud, Peter Eric Studd, Jack Doherty Sutton, John Daniel Taggart, LL.B. Liverpool, John Collins Tait, M.A. Cantab., Derek Lewis Taylor, LL.B. London, Frank Ernest Taylor, Hubert Ray Taylor, Raymond John Tearle, Frederick Robert Errington Thairlwall, Howard George Thomas, John William Thomson, B.A. Cantab., Robert Owen Thomson, Frederick John Cooper Thwaites, John Richard Tinn, Brian Edgell Toland, B.A. Oxon, Waltheof Edwin Shepperson Tooth, B.A. Oxon, Philip Towle, Kenneth David Treasure, Herbert Montague Trethowan, Alan Ernest Tunbridge, George Hamilton Turner, Neville Roberts Tutin, John Ullock, John Francis Webster Unsworth, Anthony John Bowyer Vaux, B.A. Oxon, Edward Versluys, Robert John Viall, Colin Huson Walker, Douglas James Walker, Michael Sykes Walker, B.A. Cantab., Evelyn Malcolm Echalaz Walther, Henry Gabriel Ware, B.A. Oxon, Jack Ringe Wareham, LL.B. London, John Frederick Warren, B.A. Cantab., Pierce Derek Warren, B.A. London, Alfred Austin Webb, B.A. Oxon, Frank Brian Webb, LL.B. Leeds, Herbert Culverhouse Weller, LL.B. London, John William Weston, Steven Ashley Whitteridge, Edith Williams, Allen Sidney Wisdom, Cecil Vivian Wolfson, B.A. Cantab., Andrew Wood, B.A. Cantab., Peter Watson Wood, Thomas Henry Guppy Wood, Thomas Neville Wood, James Osborn Barker Wraith, B.A., LL.B. Cantab., William Malcolm Wright, Charles Yates. Number of candidates, 552; passed 361.

The Council have awarded the following prizes: To William Madeley James, B.A., LL.B. Cantab., who served his Articles of Clerkship with Mr. Charles Richard Wigan, M.A., D.L., of the firm of Messrs. Wigan & Co., of London, the Edmund Thomas Child Prize, value about £21; and to John Edward Parkes, who served his Articles of Clerkship with Mr. Bartram Waller Attlee, M.A., of the firm of Messrs. Tylee, Mortimer & Attlee, of Romsey, the John Mackrell Prize, value about £11.

Societies.

General Council of the Bar.

American Legal Visitors.

On Saturday, 31st July, a programme of reception was arranged by the General Council of the Bar for the party of American lawyers and their relatives who arrived in London on their way to the International Congress of Comparative Law at The Hague.

The visitors were welcomed by Mr. Heber Hart, K.C., Treasurer of the Middle Temple, and Sir Herbert Cunliffe, K.C., Chairman of the General Council of the Bar of England, in the Hall of the Middle Temple. After a visit to the Record Office Museum, tea and refreshments were provided in the Hall of the Inner Temple by the courtesy of the Treasurer, His Honour A. W. Bairstow, K.C., and the Masters of the Bench of the Inner Temple. Visits were then made to the gardens of Lincoln's Inn and Gray's Inn. In the evening there were dinners at the private houses of members of the Bar. There was also a concert at the residence of Mr. and Mrs. M. P. FitzGerald.

The members of the American party were: Messrs. J. Watson Allen (Boston, Mass.), representing the Attorney-General, U.S.A.; A. J. Freiberg (Cincinnati, Ohio), ex-President of the Cincinnati Bar Association; Pendleton Beckley (Paris), representative of the American Bar Association on the Union Internationale des Avocats; W. van Vleck, Dean of the George Washington University Law School; Dr. F. Regis Noel (Washington D.C.), past President of the Bar Association of the District of Columbia; Arnold Frye (New York); E. Smythe Gambrell (Atlanta, Ga.); Howard Le Roy (Washington D.C.); Pearce C. Rodey (Albuquerque, New Mexico); John T. Vance, Librarian of the Congress Library (Washington D.C.); Henry P. Thomas (Alexandria, Va.); Miss Mary A. Brown and Miss Mary M. Connelly (Veterans' Administration, Washington D.C.); Miss Ellyne E. Strickland (Washington D.C.), all official delegates of the American Bar Association to the Hague Congress; Mr. J. E. Sebree; Louis Caldwell (Federal Communications Commission, Washington D.C.); P. N. Booth (Louisville, Kentucky); W. Kerkham (Washington D.C.); Wilbur C. Gray; Harry Schriver; G. T. McGillivray (Seattle, Wash.); Mrs. F. R. Lyman; and Mrs. Harry Vickers.

At the reception in the Hall of the Inner Temple the following, in addition to the American party, were present, among others: His Honour A. W. Bairstow, Treasurer of the Inner Temple, Rt. Hon. Lord Macmillan, G.C.V.O., Mr. Justice du Parcq, His Honour Judge Earengey, K.C., and Mrs. Earengey, Mr. R. M. Montgomery, K.C., and Mrs. Montgomery, Paul Sandilands, K.C., Mr. H. A. Christie, K.C., and Mrs. Christie, Mr. and Mrs. J. H. Stamp, Mr. and Mrs. G. K. Rose, Mr., Mrs. and Miss G. F. Kingham, Albert Crew, T. M. O'Callaghan, E. Garth Moore, Mr. and Mrs. M. P. FitzGerald, Mr. and Mrs. E. A. Godson (Secretary of the General Council of the Bar), Mr. and Mrs. F. A. Martineau, E. Cuddon, Mr. and Mrs. F. J. Varley, Mr. and Mrs. R. G. Micklethwait, V. R. Idelson, Mrs. Mark Potter, and Roy Robinson (Sub-Treasurer of the Inner Temple).

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. WALTER DACK to be Chief Accountant of the Supreme Court Pay Office, in succession to Mr. Frank Coucher, I.S.O., who retired on 31st July, having served over forty-five years in the Public Service, nearly forty-four years being spent in the Pay Office.

Mr. E. MORRIS GIBSON, solicitor, of Messrs. Spencer, Gibson and Son, of Queen Street, E.C., and of Cheam and Sutton, Surrey, has been appointed Vice-Chairman of the Governors of the Boys' County School at Sutton and also Chairman of the Managers of the Sutton and Cheam Hospital. Mr. Gibson was admitted a solicitor in 1891.

Professional Announcements.

(2s. per line.)

Messrs. CLIFFORD-TURNER & Co., of 11, Old Jewry, and 44, Gresham Street, E.C.2, announce that as from the 1st August, 1937, they have taken into partnership Mr. NORMAN B. LINTOTT and Mr. JOHN N. L. ISAAC, both of whom have been associated with the firm for some years.

Notes.

The Industrial Welfare Society (Incorporated) has arranged a special course of three lectures to explain the far-reaching changes in factory law brought about by the new Factories Act. The lectures, to be given by Mr. H. Samuels, Barrister-at-Law, will be held at the headquarters of the Society, 14, Hobart Place, Westminster, S.W.1, from 6.30–7.45 p.m., on Thursdays, 16th, 23rd and 30th September. The course will be repeated in Birmingham on Wednesdays, 6th, 13th and 20th October. Further particulars may be obtained from the Secretary of the Industrial Welfare Society.

Lord Hailsham, the Lord Chancellor, left last Saturday for a voyage for his health to South America. Lady Hailsham is accompanying him and they are to visit Buenos Aires and Rio de Janeiro. The appointment of Commissioners for the Care and Custody of the Great Seal during any absence of the Lord Chancellor has been announced. The Commission consists of Lord Halifax, Lord President of the Council; Lord Onslow, Chairman of Committees of the House of Lords; Lord Hewart, Lord Chief Justice; Sir Wilfrid Greene, Master of the Rolls; and Sir Boyd Merriman, President of the Probate, Divorce and Admiralty Division.

DIVORCE.

Petitions under the Matrimonial Causes Act, 1937, will not be accepted for filing in the Divorce Registry before 1st January, 1938, the date upon which the aforesaid Act comes into operation.

H. F. O. NORBURY,
Senior Registrar.

Principal Probate Registry,
Somerset House, W.C.2.
4th August, 1937.

Wills and Bequests.

Mr. John George Godard, J.P., solicitor, of Temple Chambers, Temple Avenue, E.C., left £10,679, with net personalty £4,882.

Mr. Albert Burton, solicitor, of Southwark, partner in the firm of Messrs. Burton & Son, solicitors, left £5,912, with net personalty £1,382.

Mr. Daniel John Preston, solicitor, of Blackburn, left £16,570, with net personalty £15,973.

Mr. William Arthur Smith, solicitor, of Halstead, left £34,644, with net personalty £20,589.

Mr. Norman Thomson Crombie, solicitor, of Clifton, Yorks, and York, left £30,877, with net personalty £23,880. He left £100 each to the Solicitors' Benevolent Association, Clifton Church, York, the York County Hospital, the York Lodge Charity Fund Special Account, and the York Lodge Building Fund Account; £100 to W. Brother Livesey's Special Charity Account for the Province of North and East Yorkshire; £50 to the York Library; such sums as with donations previously given by him will make up to £100 each to the Royal Masonic Benevolent Institution, the Royal Masonic Institution for Boys, and the Royal Masonic Institution for Girls.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 12th August, 1937.

	Div. Months.	Middle Price 4 Aug. 1937.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	107½	3 14 5	3 9 1
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3½% 1952 or after	JD	100½	3 9 10	3 9 7
Funding 4% Loan 1960-90	MN	110⅜	3 12 3	3 6 6
Funding 3% Loan 1959-69	AO	94½	3 3 6	3 5 8
Funding 2¾% Loan 1952-57	JD	92	2 19 9	3 6 1
Funding 2½% Loan 1956-61	AO	86½	2 17 10	3 6 6
Victory 4% Loan Av. life 22 years	MS	109½	3 13 3	3 7 11
Conversion 5% Loan 1944-64	MN	112⅝	4 8 10	2 13 9
Conversion 4½% Loan 1940-44	JJ	106⅛	4 4 10	2 7 3
Conversion 3½% Loan 1961 or after	AO	100½	3 9 8	3 9 5
Conversion 3% Loan 1948-53	MS	98xd	3 1 3	3 3 1
Conversion 2½% Loan 1944-49	AO	95½	2 12 4	2 19 0
Local Loans 3% Stock 1912 or after	JAJO	85½	3 10 2	—
Bank Stock	AO	340½	3 10 6	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	77	3 11 5	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	84	3 11 5	—
India 4½% 1950-55	MN	111	4 1 1	3 8 8
India 3½% 1931 or after	JAJO	91½	3 16 6	—
India 3% 1948 or after	JAJO	78	3 16 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	110	4 1 10	3 17 11
Sudan 4% 1974 Red. in part after 1950	MN	109	3 13 5	3 2 11
Tanganyika 4% Guaranteed 1951-71	FA	108	3 14 1	3 4 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	105	4 5 9	3 5 6
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	86	2 18 2	3 11 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	104	3 16 11	3 13 10
Australia (Commonw'th) 3% 1955-58	AO	89	3 7 5	3 15 4
Canada 4% 1953-58	MS	106xd	3 15 6	3 10 0
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
New South Wales 3½% 1930-50	JJ	96	3 12 11	3 18 0
New Zealand 3% 1945	AO	95	3 3 2	3 15 8
Nigeria 4% 1963	AO	110	3 12 9	3 8 4
Queensland 3½% 1950-70	JJ	96	3 12 11	3 14 4
South Africa 3½% 1953-73	JD	101	3 9 4	3 8 4
Victoria 3½% 1929-49	AO	97	3 12 2	3 16 4
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	86	3 9 9	—
Croydon 3% 1940-60	AO	96	3 2 6	3 5 0
*Essex County 3½% 1952-72	JD	102	3 8 8	3 6 8
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71xd	3 10 5	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	83xd	3 12 3	—
Manchester 3% 1941 or after	FA	84	3 11 5	—
Metropolitan Consd. 2½% 1920-49	MJSD	94xd	2 13 2	3 2 2
Metropolitan Water Board 3% "A" 1963–2003	AO	87½	3 8 7	3 9 9
Do. do. 3% "B" 1934-2003	MS	87xd	3 9 0	3 10 2
Do. do. 3% "E" 1953-73	JJ	93½	3 4 2	3 6 3
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 6 2
* Do. do. 4½% 1950–70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable	MN	84½	3 11 0	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	106	3 15 6	—
Gt. Western Rly. 4½% Debenture	JJ	117½	3 16 7	—
Gt. Western Rly. 5% Debenture	JJ	128½	3 17 10	—
Gt. Western Rly. 5% Rent Charge	FA	127½	3 18 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126	3 19 4	—
Gt. Western Rly. 5% Preference	MA	117½	4 5 1	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 12 1
Southern Rly. 5% Guaranteed	MA	127	3 18 9	—
Southern Rly. 5% Preference	MA	116½	4 5 10	—

*Not available to Trustees over par.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

1937

tain

Stock
37.

Approximate Yield with Redemption
£ s. d.
3 9 1
—
3 9 7
3 6 6
3 5 8
3 6 1
3 6 6
3 7 11
2 13 9
2 7 3
3 9 5
3 3 1
2 19 0
—
—
—
—
3 8 8
—
—
3 17 11
3 2 11
3 4 9
3 5 6
3 11 3
3 13 10
3 15 4
3 10 0
3 2 3
3 18 0
3 15 8
3 8 4
3 14 4
3 8 4
3 16 4
—
3 5 0
3 6 8
—
—
—
—
—
3 2 2
3 9 9
3 10 2
3 6 3
3 6 2
3 5 3
—
3 8 5
—
—
—
—
—
—
3 12 1
—
—

alculated